

AMENDED AND RESTATED LEASE
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
THE MOUNTAINEERS

THIS LEASE AGREEMENT is made and entered into by and between **THE CITY OF SEATTLE** ("the City"), a first class city of the State of Washington, acting by and through its Superintendent of the Department of Parks and Recreation ("Superintendent"), and **THE MOUNTAINEERS**, a Washington private not-for-profit corporation ("The Mountaineers").

WHEREAS, the Seattle Department of Parks and Recreation (DPR) has jurisdiction over and manages Warren G. Magnuson Park, including the buildings therein; and

WHEREAS, The Mountaineers was founded in 1906 to explore, study, preserve and enjoy the natural beauty of the outdoors and has continuously engaged in recreational, educational, conservation and public outreach activities pursuant to that purpose; and

WHEREAS, DPR and The Mountaineers both work to educate the general public about recreation and to develop public programs; and

WHEREAS, The Mountaineers and DPR desire to collaborate in order to achieve their shared long-term vision and goals with respect to the development of recreation and education activities at Magnuson Park; and

WHEREAS, the parties agree that the public benefits from The Mountaineers' financial, activity, and program commitments to remodel and improve Building 67 and the surrounding area, construct a rock climbing plaza and other facilities, and establish an important community recreation, training, and conservation center at Magnuson Park, will be substantial; and

WHEREAS, The Mountaineers and DPR wish to enter into this Agreement for the purpose of setting forth the terms and conditions under which The Mountaineers will occupy and use portions of Building 67 and adjacent area, including the proposed terms and conditions under which the renovation project shall be financed, constructed, and operated;

NOW, THEREFORE, for and in consideration of the continuing services to be provided to the City, for payment of rent, maintenance and other value, and in further

consideration of and subject to the mutual promises, terms, conditions and performances described herein, the parties agree as follows:

ARTICLE 1. PREMISES

1.1 Premises Description. The Mountaineers does hereby lease from the City and the City hereby leases to The Mountaineers all of the interior of the building commonly known as BUILDING 67, Magnuson Park (the "Building") except for the office used by DPR containing 184 square feet and identified as the "Parks Office" on the Premises site plan attached hereto as Exhibit A. The portion of the Building leased to The Mountaineers consists of 26,049 square feet, more or less, and is located on a portion of the real property legally described in the attached Exhibit B (the "Property").

Except for that portion of the Property immediately adjacent to the west side of the Building legally described on Exhibit C and identified on Exhibit D as the "Exterior Area", and as to which the City hereby grants The Mountaineers the exclusive right during the term of this Lease to use and maintain as a landscaped Building entry area, the City reserves the use of and, subject to the provisions of Section 6.9, shall be responsible for the maintenance, repair, management, regulation and programming of all portions of the Property outside the Building footprint. The Building and Building entry area are collectively referred to herein as the "Premises". The Premises are located at 7700 Sand Point Way NE, Seattle, King County Washington 98115.

1.2 Nonexclusive License to Use Common Areas. The Mountaineers have constructed the Climbing Facilities (as defined in Section 8.4) adjacent to the Building in the area depicted on Exhibit D. The Climbing Facilities are not included within the Premises although Tenant has a right to use the Climbing Facilities as described in Article 8. Following completion of construction of the Climbing Facilities and for the duration of the Term, The Mountaineers may use the Climbing Facilities in accordance with the terms and conditions set forth in Sections 8.4 through 8.8, below. In addition, The Mountaineers may use all other Magnuson Park common areas, as from time to time constituted, in common with all other visitors and users of Magnuson Park and subject to such generally applicable rules and regulations as the Superintendent may promulgate. Notwithstanding the foregoing, The Mountaineers shall obtain a DPR permit for any programming it wishes to conduct in any Magnuson Park area other than the Premises and the Climbing Facilities.

1.3 Acceptance of Premises. The Mountaineers has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by The Mountaineers hereunder. The Mountaineers accepts the Premises in their condition as of the Commencement Date AS IS, with all defects, and assumes all risk that one or more defects exist in the Premises, except as otherwise provided herein. The City makes no warranties or representations of any kind, express or implied, with respect to the condition of the Premises or their suitability for The Mountaineers' purposes other than as specified in this Agreement. The

Mountaineers agrees that any express or implied representations or warranties made by or on behalf of the City prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever. The Mountaineers makes no warranties or representations of any kind, express or implied, with respect to its use and occupancy of the Premises or the improvements to be made thereto other than as specified in this Agreement. The City agrees that any express or implied representations or warranties made by or on behalf of The Mountaineers prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

The Mountaineers agrees that the City shall have no liability or obligation as a result of any defect or condition of the Building or Premises, including without limitation latent defects, unless expressly set forth in this Agreement. The City shall have no obligation to undertake any repairs, maintenance or other work of any kind except as expressly set forth in this Agreement.

The Mountaineers and the City acknowledge that this Article has been specifically bargained for and that the City would not be willing to permit The Mountaineers to use and occupy the Premises on the terms and conditions set forth herein without The Mountaineers' agreement to the terms of this Article.

The Mountaineers acknowledges that copies of the Asbestos Survey at Naval Station Puget Sound, BUILDING 67 and the Lead Inspection Data, NAVSTA Puget Sound, Building Number 67 have been made available to it for inspection. The Mountaineers shall notify and provide information to all persons working in or about the Premises as to the availability of such documents if and to the extent required by applicable law. The City shall make available to The Mountaineers within two (2) days after execution of this Lease all documents in its possession or control relating to the condition of the Premises and Hazardous Substances (as defined in Section 12 below) in, on, under, or around the Premises together with any agreements with the prior owner relating to such matters. The Mountaineers shall have the right to terminate this Agreement if it is not satisfied in its sole discretion with the content of such reports and agreements.

ARTICLE 2. TERM

2.1 Term of Agreement. Subject to the provisions of Paragraph 2.2 and unless terminated earlier as provided herein, the Initial Term of this Agreement shall be thirty (30) years, commencing on the date when The Mountaineers notifies the construction contractor to proceed with the renovation of the Premises for their use as an outdoor education center as contemplated herein (the "Commencement Date"), which the parties agree occurred on February 18, 2008. Provided The Mountaineers is not in default after receipt of notice and expiration of any applicable cure period, The Mountaineers shall have the option to renew this Agreement for two additional terms of ten (10) years, each, upon the same terms and conditions (the "Extended Term(s)") except that the final Extended Term shall not contain any additional renewal options. The Mountaineers shall exercise each such option by giving the City a written notice of exercise at least twelve (12) months before the expiration of the then-current Term.

2.2 Approved Renovation Costs. The parties acknowledge and agree that The Mountaineers' renovation of the Premises is a fundamental purpose of this Agreement, and The Mountaineers raised sufficient funds for that purpose. The Mountaineers has supplied the Department of Parks and Recreation Finance and Administrative Services Director (the "DPR Finance Director") with documents demonstrating that it incurred renovation costs in the amount of \$4,800,000.00, and the DPR Finance Director has reviewed and approved these costs

ARTICLE 3. USE

3.1 Purposes Authorized. The Mountaineers shall use the Premises as a recreation training and community center, including activities such as classes, exhibitions and sales; regular and special meetings of The Mountaineers' membership, Board of Trustees, divisions, activities committees, etc.; for fundraising activities supporting the overall mission of The Mountaineers; and for other events related to the Premises' use as The Mountaineers main club facility. The Mountaineers may also use the lower level of the Premises for storage for itself and for other users who would qualify as park and recreation concessionaires, licensees or tenants. The Mountaineers shall not use the Premises for any other purposes without the Superintendent's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. If The Mountaineers requests consent to any additional use, the Superintendent shall be deemed to have approved the use unless he denies his consent in writing, within twenty (20) days of the request.

Magnuson Park has limited capacity to handle multiple events with large numbers of expected attendees. Therefore, if The Mountaineers reasonably anticipates that more than 150 people will attend any event on the Premises, The Mountaineers shall provide the City with no less than thirty (30) days' advance written notice of the anticipated event. If the City determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify The Mountaineers within five (5) business days after receipt of The Mountaineers'

notice. Upon receipt of such notice, The Mountaineers must either reschedule the event or reduce the size of the event to less than 150 attendees.

3.2 Management and Operations Plan. The Mountaineers shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), an annual plan for the management and operation of the Building. The first plan shall be due on or before the date that is thirty (30) days prior to The Mountaineers' occupancy of the Premises for operational purposes, and subsequent plans shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable DPR facilities, but at a minimum, shall include a description of the then-scheduled upcoming programming; anticipated user fees/rental rates; and The Mountaineers' equal opportunity outreach program, if available. The City shall be deemed to have approved the plan (and all uses and events noted therein) unless it denies its consent in writing within twenty (20) days. The Mountaineers may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. The City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it denies its consent in writing within twenty (20) days.

3.3 Public Participation. To the extent permitted by The Mountaineers' generally applicable rules and regulations, operating procedures, bylaws and other organizational documents, The Mountaineers agrees to provide for public participation in The Mountaineers' decision-making with respect to the Premises, as appropriate, to assure broad membership and community participation in The Mountaineers' programs and that the Premises are used and maintained for the public purposes for which they were conveyed to the City, in perpetuity. Membership in The Mountaineers shall be open to the public subject to The Mountaineers' generally applicable rules and regulations, operating procedures, bylaws and other organizational documents and payment of any membership fees. Notifications of all elections for officers or trustees shall be posted in a publicly accessible location for a period of time prior to such elections as is reasonably calculated to provide public notice of the same. Only members of The Mountaineers shall be entitled to vote in any such elections notwithstanding the public posting. The general public may attend all The Mountaineers' Board of Trustees meetings, with the exception of executive sessions, and a schedule shall be made publicly available.

3.4 Park Department Use. DPR shall have the right to use the Premises at no charge, for DPR internal programs or, by mutual agreement for other events, at rates comparable to those The Mountaineers charges to third parties, on an "as available" basis by contacting The Mountaineers at least one (1) week but not more than forty-five (45) days in advance of the proposed use date. Except by mutual agreement, DPR's use under this paragraph shall be limited to one (1) time in any month and a total of twelve (12) times per year. DPR shall provide staffing or pay for opening and closing charges if the desired use is on a day or during a time that The Mountaineers does not typically open the Premises. DPR shall reimburse The Mountaineers for all costs and expenses

incurred by The Mountaineers in connection with such usage (including but not limited to cleaning and security costs) and shall abide by all rules and regulations established by The Mountaineers for third parties' use of the Premises. DPR shall execute The Mountaineers' standard facility use agreement for each such use of the Premises and shall be bound by all of the same terms and conditions that The Mountaineers imposes with respect to any other third party's use of the Premises, except fees and charges. The City acknowledges that the facility use agreement may, among other terms and conditions, contain indemnity and release of liability provisions.

3.5 Sublicenses. The Mountaineers may permit other individuals or organizations to use all or portions of the Premises on a short-term basis with the City's prior approval for any activity that is consistent with the Premises' use as the headquarters for The Mountaineers and its use as a recreation and meeting site provided that The Mountaineers must provide advance written notice of any such use to the City. The Mountaineers shall include the process for selection of individuals or groups to use the Premises in the annual Management and Operations Plan, together with the terms of the proposed use agreements. The terms of the proposed use agreement shall apply to all uses of the Premises by DPR.

ARTICLE 4. RENT; REDUCTIONS AND OFFSETS THERETO; TAXES

4.1 Minimum Rent. On or before the tenth day of the first month immediately following the Commencement Date and on or before the tenth day of each month thereafter during the Term, The Mountaineers shall pay the City "Minimum Rent" in the amount of \$200 per month.

4.2 Base Rent. In addition to the Minimum Rent, beginning on the tenth day of the first month immediately following The Mountaineers' receipt of an occupancy permit for the Premises, and on the tenth day of each month thereafter during the Term, The Mountaineers shall pay the City "Base Rent" in the amount of \$4,970.00 per month. Commencing on November 1, 2009, the monthly Base Rent shall increase to \$5,989.00.

4.3 Adjustments to Minimum and Base Rent. Beginning on the fifth anniversary of the Commencement Date and every five (5) years thereafter until the expiration or termination of this Agreement (each, a "Rent Adjustment Date"), Minimum and Base Rent (collectively referred to herein as "Rent") shall be adjusted upward only to reflect increases in the total noncompounded percentage change in the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor between the first and last years being adjusted; provided, however, that in no event shall Minimum Rent and Base Rent increase by more than four percent (4%) per year on a cumulative basis over the five (5) year period. The City shall notify The Mountaineers in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly rent amount that will be due starting on such Rent Adjustment Date.

By way of example only, if the CPI on the commencement date of this Agreement is 100 and the CPI most recently issued prior to the first Rent Adjustment Date is 110 and the annual Rent due under this Agreement is \$60,000, then the total CPI adjustment would be 10% and annual Rent under this Agreement would increase to \$66,000 effective as of the Rent Adjustment Date. In no event shall the Rent, as adjusted for any period, be less than Rent payable during the immediately preceding period. In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation.

4.4 Additional Rent. The Mountaineers shall pay the City annually, as "Additional Rent", ten percent (10%) of Gross Receipts that are derived from the use and occupation of the Premises for non-Mountaineers sponsored events and events where merchandise is sold. All installment or credit sales shall be deemed to have been made for the full price on the date of sale regardless of when payment is received.

The term "Gross Receipts" does not mean or include sums raised through fund-raising events benefiting The Mountaineers solely; membership dues or fees; The Mountaineers' class tuition charges; the amount of money refunded to, and not merely credited to the account of customers who return or do not accept merchandise or services sold by The Mountaineers or any subtenant or concessionaire; returns to shippers or manufacturers; any discount allowed by The Mountaineers or any subtenant or concessionaire to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales. Gross Receipts shall also exclude the items described on Exhibit E attached hereto.

4.5 Capital Improvement Rental Offset. The Mountaineers shall be entitled to an offset against Base Rent and Additional Rent, only, during the entire Term of this Agreement, including the Extended Terms, in an amount equal to The Mountaineers' expenditures (including all hard and soft costs such as, but not limited to, labor, materials, architect and engineering fees, permits, construction or project management, sales tax, and consultants' fees) for the approved initial renovation of the Premises, including the Climbing Facilities (as defined in Section 8.4), and any subsequent capital expenditures made to renovate the Premises approved by the City under Section 7 below and any expenses incurred to repair the roof or structural portions of the Building or Building mechanical, HVAC, plumbing or life safety systems. Not later than six (6) months after The Mountaineers receives an occupancy permit for the Premises (or upon completion of any later capital improvements approved by the City under Section 7 below), it shall provide the DPR Finance Director with an accounting of its costs associated with the capital improvements completed to the Premises, together with such supporting documentation as the DPR Finance Director may reasonably request. The DPR Finance Director acting in accordance with generally accepted accounting principles shall certify the total amount of those costs and this amount shall constitute the amount of The Mountaineers' Capital Improvement Rental Offset. The Capital

Improvement Rental Offset shall be credited against the Base Rent and any Additional Rent due, in monthly installments, in such amounts as The Mountaineers may determine from time to time. Each month, The Mountaineers shall report to the DPR Finance Director the amount of Capital Improvement Rental Offset it is applying to such Base and Additional Rent. If the Capital Improvement Rental Offset exceeds the total Base Rent and Additional Rent due under this Lease during the Initial Term, the remaining value of The Mountaineers' capital expenditures shall be deemed to have been donated to the City at the termination or expiration of this Agreement, and the improvements shall be surrendered with the Premises as provided in Article 7, without the need for further action by The Mountaineers or the City provided that if The Mountaineers extends the Agreement pursuant to Section 2.1 above, the balance of the Capital Improvement Rental Offset shall be offset against Rent due during the Extended Term(s).

4.6 Public Program Rental Offset. The Mountaineers may request a Public Program Rental Offset against Base Rent and Additional Rent to reflect expenditures for programming that is available to the public (such as scholarship programs or public classes). In the annual Management and Operations Plan described in Paragraph 3.2, The Mountaineers may identify the amount of Public Program Rental Offset it is requesting for the subsequent calendar year and the justification for the request. The Superintendent will act reasonably in reviewing the request and will respond within thirty (30) days stating the amount, if any, of the Public Program Rental Offset allowed for the upcoming calendar year. The amount of the Public Program Rental Offset for a given year shall rest in the Superintendent's sole discretion. Any Public Program Rental Offset shall be credited against the Base Rent and any Additional Rent due, in monthly installments, in such amounts as the Superintendent determines. With each monthly payment, The Mountaineers shall report to the DPR Finance Director the amount of Public Program Rental Offset being applied to Base and Additional Rent.

4.7 Climbing Plaza Public Program Rental Offset. In addition to the offset permitted under the terms of paragraph 4.6, the parties agree that the initial fair value of the public programming resulting from the anticipated construction, donation, and public availability of the Climbing Facilities is \$2,665.00 per month, and The Mountaineers may offset that amount against the Base Rent and Additional Rent in equal installments on a monthly basis for the Initial Term and any Extended Term(s). Adjustments to the Climbing Plaza Public Program Rental Offset shall be made following the same method used to adjust Minimum and Base Rent, as described in paragraph 4.3.

4.8 Taxes. The Mountaineers shall pay to DPR monthly whatever leasehold excise tax is assessed pursuant to Chapter 82.29A RCW as a consequence of The Mountaineers' use and occupancy of the Premises under this Agreement. In addition, The Mountaineers shall pay before their delinquency, all other taxes that may be due and payable with respect to property owned by and the activities of The Mountaineers on the Premises to the extent failure to do so could result in a lien against the Premises.

4.9 Offset Inapplicable to Taxes. The reduction and offsetting of any Rent pursuant to Sections 4.5, 4.6 and 4.7 hereof shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of The Mountaineers. Unless The Mountaineers is exempt from the payment of leasehold excise taxes, all such taxes shall be payable only in cash or cash equivalents. The City shall not contest any application by The Mountaineers for an exemption from the leasehold excise tax.

4.10 Rent and Leasehold Excise Tax Payment Date and Address. Rent and leasehold excise tax due and payable under this Agreement shall be remitted on the tenth (10th) calendar day of each month during the term of this Agreement to the City at the address shown in Article 23 hereof, or to such other place as DPR may hereafter designate.

4.11 Late and Refused Payments. The Mountaineers acknowledges that late payment to the City of the Rent or any other sum due to the City hereunder will cause DPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of legal enforcement of this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if The Mountaineers fails to pay any sum after such amount is due to the City, The Mountaineers shall also pay to the City a rate of interest to be charged on delinquent accounts as established by Ordinance 117969, incorporated herein by reference from the due date until the payment date. In addition, The Mountaineers shall pay the City a Twenty Dollar (\$20.00) charge for each check refused payment for insufficient funds or any other reason.

ARTICLE 5. UTILITIES AND SERVICES

5.1 Utilities. Upon the Commencement Date, The Mountaineers shall be responsible for and shall ensure that all utility accounts associated with the Premises are transferred to The Mountaineers and that such transfers remain in effect on and through the date on which The Mountaineers surrenders the Premises. The City will provide whatever confirmation or assistance is necessary to transfer utility accounts to The Mountaineers' name. As part of the renovation of the Premises, The Mountaineers shall ensure that all utilities are separately metered. The Mountaineers shall pay, before delinquency, all charges incurred for or in connection with the providing of telephone, electricity, gas, oil, water, sewer, garbage collection, cable, computer, and all other utility services to or for the Premises. If any such charges relate to the space in the Building not included within the Premises, such charges shall be prorated among the spaces benefited by the charges and The Mountaineers shall pay only the portion of the charge attributable to the Premises.

5.2 City Not Liable for Utility Service Failures. The City (when acting in its capacity as landlord) shall not be liable, and The Mountaineers hereby waives any claim against the City (when acting in its capacity as landlord) and shall hold the City (when acting in its capacity as landlord) harmless for, the failure, for any reason not caused by

the negligent acts or omissions of the City or its employees or agents, of any utility service for the Premises.

ARTICLE 6. CARE OF PREMISES

6.1 The Mountaineers' Repair Obligation. During the Term of this Agreement, The Mountaineers, at no cost to the City, shall make all necessary repairs to the Premises, including but not limited to, the heating, ventilating, and electrical systems serving or located within the Premises; glass; boiler and plumbing exclusively serving or located within the Premises; lighting; furniture, fixtures, and equipment located within and on the Premises. If The Mountaineers repairs and maintains systems located within the Premises that also serve other premises in the Building, then the City shall cause the occupant of the other premises, if any, to reimburse The Mountaineers for the share of the cost attributable to such other premises, but in no event shall the City bear any costs associated with improvements to areas that are unoccupied. Such repairs shall be in accordance with all applicable statutes, City ordinances, codes and directions or regulations of public authorities. The Mountaineers shall not be required to make any repairs nor pay any costs relating to repairs to the space in the Building not included within the Premises unless and to the extent the same are required for The Mountaineers to obtain a certificate of occupancy for the Premises.

6.2 The Mountaineers' General Cleaning and Janitorial Services Obligation. The Mountaineers shall keep the Premises in a safe, sanitary and serviceable condition, and shall provide all general cleaning and janitorial services as may be required in and for the Premises. The Mountaineers shall be responsible for frequent trash removal and litter pickup on and within fifty (50) feet of the Premises. The City shall provide a location for a trash dumpster in reasonable proximity to the Premises at no additional cost.

6.3 The Mountaineers' Major Maintenance Obligation. The Mountaineers shall provide and be responsible for all major maintenance for the Premises, including but not limited to electrical and mechanical systems and painting, all at no cost to the City. Except in an emergency when no prior notice is required, all major maintenance activity undertaken by or for The Mountaineers on the Premises shall be performed only in accordance with plans and specifications reviewed and approved, in writing, by DPR prior to its implementation. DPR shall not unreasonably withhold, condition, or delay its approval and such approval shall be deemed to have been given if not withheld in writing within ten (10) business days after delivery of a request for approval. The Mountaineers shall ensure that as a consequence of its major maintenance activity, the Premises and improvements made thereto, are preserved in good operating condition throughout the term of this Agreement and are in good working condition upon termination.

6.4 The Mountaineers' Preventive Maintenance and Custodial Care Obligation. The Mountaineers shall implement, at no cost or expense to the City, a preventive maintenance and custodial care program for the Premises that is consistent with programs utilized in similar facilities and operations.

6.5 Intrusion Alarm Installation Obligation. The Mountaineers may provide and install on the Premises, at no cost to the City, an intrusion alarm system reasonably acceptable to DPR.

6.6 Fire Suppression Systems Installation Obligation. The Mountaineers shall install in all areas where cooking is to occur, hoods, vents, and fire suppression systems that have been approved by the Washington Survey and Rating Bureau to qualify for maximum fire insurance rate credit. The foregoing shall not apply to coffee makers, warming trays and microwave ovens. If the premium for fire insurance on the Premises is increased as a result of The Mountaineers' failure to install such an approved system, The Mountaineers shall be liable for and shall promptly pay, upon the City's request, the increase.

6.7 Joint Annual Inspection of Premises; Remedial Action Obligation. The Mountaineers shall participate in an annual inspection of the Premises with DPR and shall take any and all action that is consistent with the terms of this Lease that DPR may specify as necessary to maintain and operate the Premises in a clean and safe manner.

6.8 City Remedy Upon The Mountaineers' Failure to Maintain Premises. If The Mountaineers fails to maintain the Premises in good order, condition, and repair, DPR shall give The Mountaineers notice to undertake such work as is reasonably required to so maintain the Premises. If The Mountaineers fails to commence such work within thirty (30) calendar days after the effective date of the City's notice and to diligently prosecute it to completion, then DPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice The Mountaineers for the costs reasonably incurred by the City in connection therewith. DPR shall have no liability to The Mountaineers for any damage, inconvenience, or interference with The Mountaineers' use of the Premises as a result of the City's performing any such work, except to the extent of its or its agents or contractors negligence or intentional misconduct.

6.9 Climbing Wall. The Mountaineers agrees to repair and maintain the South Climbing Wall (as defined in Section 8.4 below) and climbing boulder in accordance with Section 8.5.4, below. Notwithstanding The Mountaineers' agreement to perform such repair and maintenance, The Mountaineers shall not be responsible for any use of the Climbing Plaza by members of the general public or anyone using the Climbing Plaza except as part of a class or program organized by The Mountaineers. Provided The Mountaineers has fully and timely performed all of its repair and maintenance obligations under Section 8.5.4, the City shall be responsible for and will pay all claims arising out of such repair and maintenance obligations and shall hold The Mountaineers harmless therefrom.

ARTICLE 7. ALTERATIONS OR IMPROVEMENTS

The Mountaineers shall not make any alteration, addition, renovation, or improvement that would require a construction or other type of permit from the City of

Seattle Department of Planning and Development, in or to the Premises without first obtaining DPR's prior written consent which shall not be unreasonably withheld, conditioned, or delayed and shall be deemed to have been given if not withheld in writing within thirty (30) days after delivery of a request for consent. All alterations, additions, renovations, or improvements that are made shall be at the sole cost and expense of The Mountaineers. They shall remain in and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Agreement. The Mountaineers shall not permit any construction work to be performed except in accordance with Superintendent-approved plans and specifications prepared by architects or engineers licensed to practice in Washington State. The Mountaineers shall employ only contractors licensed in the State of Washington and shall ensure that prior to commencing any construction work, each such contractor has in force commercial general liability insurance naming the City of Seattle as an additional insured. If The Mountaineers requires any contractor to obtain a payment and/or performance bond for any work, it shall require the contractor to obtain a dual obligee rider naming The City of Seattle as a co-obligee.

If DPR approves any proposed plans and specifications, the same shall constitute permission for The Mountaineers and its authorized agents to enter onto the Premises or other portions of the Building necessary to prosecute the work.

Without in any way limiting the generality of Article 11, in undertaking any installation, alteration, modification, repair, renovation, or any other work on or to the Premises, The Mountaineers shall comply with all obligations imposed by applicable laws, regulations and ordinances concerning historic preservation, including the Sand Point Historic Properties Reuse and Protection Plan. The Mountaineers shall have the right to contest the applicability of any law, regulation, or ordinance.

ARTICLE 8. OPERATION AND SERVICES

8.1 General. The Mountaineers shall ensure that all supplies and materials are appropriately stored and secured in such a way as to not inconvenience or conflict with other uses and users of the Premises and Magnuson Park.

8.2 Alcohol sales. The Mountaineers shall not permit intoxicating beverages of any kind to be used, sold, consumed, or dispensed upon the Premises unless the Superintendent has approved such use, sale, consumption, or dispensing in advance, in writing, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed to have been given if not withheld in writing within seven (7) days after delivery of a request for consent. Any such use sale, consumption or dispensing shall comply with applicable laws, ordinances, rules, and regulations then in force.

8.3 Staffing. The Mountaineers shall employ personnel or assign volunteers in sufficient numbers to meet the program staffing needs of the facility.

8.4 Climbing Wall. The Mountaineers constructed a climbing wall on the south

side of the Building (the "South Climbing Wall"), a climbing boulder, an open plaza adjacent to the South Climbing Wall and boulder, various scrambling slopes and a hiking trail surrounding the plaza and adjacent common areas, as generally depicted on Exhibit D to this Lease (the "Climbing Facilities"). The term "Climbing Facilities" does not include the "technical climbing walls" located on the north exterior wall or a twenty (20) foot length on the east exterior wall of the Building extending south from the northeast corner. The Mountaineers constructed the Climbing Facilities at a cost of \$958,587.00 and it is an express condition of this Lease that the Mountaineers donate them to the City. The City hereby accepts the donation of the Climbing Facilities. The Mountaineers shall be permitted to design, install, and replace as necessary signage reasonably approved by DPR indicating that the Climbing Facilities were donated by The Mountaineers but are owned and operated by DPR. Additional signage will be provided by DPR indicating safety rules, open hours, emergency response numbers, etc., per Seattle Parks Design Standards. The Mountaineers shall have the right to exclusive use of the Climbing Facilities during classes and programs conducted by The Mountaineers as identified in the annual Management and Operations Plan described in Section 3.2. The Mountaineers shall not be required to supervise the general public's use of the Climbing Facilities or provide instruction to members of the general public. No person shall be permitted entry onto the roof of the Building from the Climbing Facilities. The Mountaineers and DPR shall jointly develop and post rules and regulations relating to the use of the Climbing Facilities including a disclaimer of liability in such form as may be recommended by counsel to The Mountaineers from time to time. The Mountaineers may enclose the Climbing Facilities behind a fence or otherwise deny public access to the Climbing Facilities if use of the Climbing Facilities causes damage to the Building or the roof, the Climbing Facilities are repeatedly damaged or defaced (unless the City pays to repair such damage), or The Mountaineers is held liable for any injury arising out of use of the Climbing Facilities. During times when public access to the Climbing Facilities is denied, the Climbing Plaza Public Program Rental Offset described in Section 4.7 will be suspended and the Public Program Rental Offset described in Section 4.6 will be reduced on a pro rata basis. DPR shall not make any changes to the Climbing Facilities without prior approval from The Mountaineers. The Mountaineers and DPR shall each designate a person who is responsible for coordinating with the other party with respect to the use of the Climbing Facilities.

8.5 Climbing Facilities Operation and Maintenance. The parties agree as follows:

8.5.1. Climbing Facilities Committee. DPR and The Mountaineers shall each designate two persons to staff a "Climbing Facilities Committee". DPR shall designate a responsible person to act as the "Climbing Facilities Supervisor". The Climbing Facilities Supervisor shall call meetings to discuss operation (route setting, holds locations, etc.), maintenance or repair issues relating to the Climbing Facilities. The Climbing Facilities Committee shall meet at least twice annually or more frequently upon request by either organization.

8.5.2. Technical Drawings and Records. The Mountaineers shall provide

to DPR a set of as-built drawings for the South Climbing Wall and climbing boulder. The Mountaineers shall also provide to DPR copies of the manufacturer's operation and maintenance standards and/or manual for the South Climbing Wall and climbing boulder. These drawings shall be archived at Warren G. Magnuson Park administrative offices, or other DPR drawing archives, for reference, inspection or repair purposes. Any modifications to the South Climbing Wall or climbing boulder shall be noted on revised as-built drawings and submitted to both parties.

8.5.3. Inspection, Maintenance and Repair Plan. The Mountaineers in coordination with DPR shall develop and implement a "Climbing Facilities Inspection, Maintenance and Repair Plan". This plan shall include as-built drawings for the South Climbing Wall and climbing boulder; and repair and maintenance schedules for the South Climbing Wall and climbing boulder. All maintenance and repair shall be performed in accordance with the wall and boulder manufacturer and/or recognized industry standards such as General Specification for the Design and Engineering of Artificial Climbing Structures, First Edition, Climbing Wall Association Standard, 15 January 2009 to ensure these respective programs are conducted and documented to meet industry standards.

8.5.4. Repairs and Maintenance. The Mountaineers shall perform repairs and maintenance on the South Climbing Wall and climbing boulder in accordance with the Climbing Facilities Inspection, Maintenance and Repair Plan. DPR shall not be held responsible for costs incurred by The Mountaineers in connection with such repair and maintenance. The City and The Mountaineers agree that if the South Climbing Wall is damaged by fire or other casualty, such damage shall be treated in the same manner as damage to the Premises under Article 10 (Damage or Destruction).

8.5.5. Route Setting. The Mountaineers shall be permitted to revise climbing routes ("route setting") in consultation with the "Climbing Facilities Committee". New routes and holds shall be installed per industry standards and inspected per schedules detailed in the "Climbing Facilities Inspection, Maintenance and Repair Plan". The Mountaineers is authorized to access the roof of the building and the enclosed area between the innermost face of the South Climbing Wall and the outermost face of the southern wall of the Building as necessary in connection with The Mountaineers route setting and use of the South Climbing Wall. DPR is not authorized to perform route setting.

8.5.6. Inspection, Maintenance and Repair Records. The Mountaineers shall maintain and provide to DPR upon request inspection, maintenance and repair records as specified in the "Climbing Facilities Inspection, Maintenance and Repair Plan".

8.5.7. Public Use. DPR shall not at any time schedule any events or permit use of the Climbing Facilities for purposes (e.g., weddings, parties, etc.) other than recreational climbing use.

8.5.8 DPR Contact Persons. The local contact person for DPR is the Warren G. Magnuson Park Manager, who has sufficient authority to develop agreements and special-use permits of the type envisioned by this agreement.

8.5.9 Similar Activities. Article 8 in no way restricts DPR or The Mountaineers from participating in similar activities with other public or private agencies, organizations and individuals.

8.6 Technical Climbing Walls. The Mountaineers may secure a ground area adjacent to the technical climbing walls attached to the north and northeast facades if the walls are repeatedly damaged or defaced or The Mountaineers is held liable for any injury arising out of the unauthorized use of the walls. The Mountaineers shall have the right to exclusive use of the technical climbing walls and DPR shall not at any time schedule any events or permit use of the technical climbing walls or the area adjacent thereto.

ARTICLE 9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification. Except as otherwise provided herein, The Mountaineers does hereby release and, to the fullest extent permitted by law, shall defend, indemnify, and hold the City harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions, or damages of any sort whatsoever arising out of The Mountaineers' use and occupancy of the Premises and the common areas of Magnuson Park for The Mountaineers' officially sponsored activities in connection with this Agreement, including any violation of any law, administrative rule or regulation. In furtherance of these obligations, and only with respect to the City, The Mountaineers waives any immunity it may have under any industrial insurance, worker's compensation, disability, employee benefit, or similar laws. The Mountaineers acknowledges that the foregoing waiver of immunity was mutually negotiated. This indemnity obligation and waiver shall not extend to any claims arising out of or relating to (a) the use of the Climbing Facilities by any person who is not at the time engaged in an event sponsored and supervised by The Mountaineers, or (b) any pre-existing contamination or Hazardous Substances in, on or about the Premises as of the date hereof, or (c) any claims arising from the acts or omissions, negligence or willful misconduct of the City or its agents or employees.

The City does hereby release and, to the fullest extent permitted by law, shall defend, indemnify, and hold The Mountaineers harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions, or damages of any sort whatsoever arising out of or relating to (a) any pre-existing contamination or Hazardous Substances in, on or about the Premises as of the date hereof, or (b) any claims arising from the acts or omissions, negligence or willful misconduct of the City or its agents or employees. In furtherance of these obligations, and only with respect to The Mountaineers, the City waives any immunity it may have under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The City does hereby waive and release The

Mountaineers from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions, or damages of any sort whatsoever arising out of or relating to the use of the Climbing Facilities by any person who is not at the time engaged in an event sponsored and supervised by The Mountaineers, except that this release and waiver shall not apply to claims alleging negligence in the design or construction of the Climbing Facilities. The City acknowledges that the foregoing release and waiver of immunity was mutually negotiated.

9.2 Survival of Indemnification Obligation. The indemnification obligations of the parties hereunder shall survive the expiration or earlier termination of this Agreement with respect to all claims arising prior to such expiration or earlier termination.

9.3 Insurance to be Secured by The Mountaineers. Prior to the commencement of any activity on the Premises under this Agreement, The Mountaineers shall secure and shall thereafter maintain in full force and effect at no expense to City, insurance as specified below.

9.3.1 Commercial General Liability (CGL) Insurance (or comparable coverage if the CGL policy ceases to be generally available), including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Fire/Tenant Legal
- Employers Liability/Stop Gap

with a minimum limit of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage, except:

- \$1,000,000 each offense as respects Personal/Advertising Injury
- \$ 500,000 each occurrence as respects Fire/Tenant Legal
- \$1,000,000 each accident/employee as respects Employers Liability/Stop Gap.

The limits of liability required herein may be evidenced by primary insurance or any combination of primary and excess/umbrella liability insurance.

9.3.2 Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage.

9.3.3. Workers Compensation insurance in compliance with Title 51 of the Revised Code of Washington (RCW).

9.3.4 All risks property insurance on business personal property on a replacement cost basis with a waiver of subrogation in favor of the City. The placement and storage of business personal property in the Premises shall be the responsibility and at the sole risk of The Mountaineers.

9.4 Terms and Conditions. (Not Applicable to Workers Compensation Insurance)

9.4.1 Insurance shall be issued by an insurer rated A- VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus lines by a Washington State licensed Surplus lines broker.

9.4.2 Liability insurance shall include the City of Seattle as an additional insured on a primary and non-contributory basis (up to the limits of such insurance) with all insurance and self-insurance the City maintains.

9.4.3 Any self-insured retention of more than One Hundred Thousand Dollars (\$100,000) is subject to the City's reasonable approval; provided, that The Mountaineers shall provide the City with a statement indicating the dollar value of both 15% of its working capital and 5% of its total assets. If either value is less than \$50,000, then The Mountaineers agrees that no self-insured retention will exceed the lesser value.

9.4.4 The City may amend the requirements for coverage and/or limits upon ninety (90) days' notice but not more frequently than once every five (5) years and with reasonable justification which shall establish that the changed coverage is consistent with the coverage required by commercial landlords on comparable facilities.

9.4.5 Insurance shall not be cancelled without written notice of such cancellation being hand-delivered or mailed to the City not less than forty-five (45) days prior to the cancellation date, except thirty (30) days as respects insurance procured under the provisions of chapter 48.15 RCW (Surplus Lines) and ten (10) days as respects cancellation for non-payment of premium.

9.5 Evidence of Insurance. Certification of insurance coverage required under this Agreement shall be delivered to each of the following prior to the Commencement Date:

Magnuson Park
c/o Manager
6310 NE 74th Street; Suite 109E
Seattle, WA 98115

The City of Seattle
Risk Management Division
P O Box 94669
Seattle, WA 98124-4669

A copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL insurance must be attached to document the City's additional insured status as required under Subsection 9.4.2.

9.6 Insurance to be Secured by the City.

9.6.1 At all times during the Term of this Agreement, the City shall maintain in full force and effect at least "causes of loss-special" (or comparable) coverage property insurance, including earthquake and flood, on the Building and all improvements therein and the South Climbing Wall on a replacement cost basis with coverage for increased costs due to changes in law and an agreed value endorsement equal to the then current replacement cost of the Building. The deductible shall be as established in the City's then current master property insurance or self-insurance program; as of the effective date of this Agreement, it is a maximum of \$500,000, each loss. Such property insurance does not cover The Mountaineers' business personal property, but does cover the improvements arising out of the renovation of the Premises. The City shall obtain an insurer's waiver of subrogation in favor of The Mountaineers and, in addition, waive its rights of recovery of the deductible amount in favor of The Mountaineers. The Mountaineers agree to pay on an annual basis its proportionate share of the City's property insurance premium based on the percentage the Premises constitutes of the total interior floor space of the Building which is, as of the Commencement Date, 33,720 square feet.

9.6.2 During such time The Mountaineers are engaged in renovation of the Premises, the City shall maintain in full force and effect builder's risk insurance, including fire and flood, on a replacement cost basis with a maximum amount of insurance of \$4,250,000, subject to a deductible of no more than \$50,000 each loss. The Mountaineers agree to pay the premium for builder's risk property insurance, which shall replace the permanent property insurance between the initiation of renovation of the Premises and the earlier of The Mountaineers' acceptance of the improvements or re-occupancy of the Premises. Contractors of all tiers shall be provided with an insurer's waiver of subrogation. In the event of a claim under the builder's risk policy, The Mountaineers shall be responsible for paying any deductible under the policy up to a maximum of \$5,000.00, if The Mountaineers or any of its agents, employees, or contractors is responsible for the loss or damage. Notwithstanding the foregoing, The Mountaineers may require that contractors pay all or a portion of the deductible.

9.6.3 Should The Mountaineers exercise its right to lease the Building's ground floor under the terms of Section 1.2 with the result that The Mountaineers becomes the sole user and occupier of Building 67, then the City may require The Mountaineers to procure and maintain, at no cost to the City, "all risks" (or other coverage comparable to what is currently classified as "cause of loss special form") property insurance or self-insurance, including earthquake and flood, on a replacement cost basis adjusted annually to then current replacement value, with a deductible acceptable to The Mountaineers. Such insurance shall include the City as an additional insured and loss payee with a waiver of subrogation.

9.7 Insurance to be Secured by The Mountaineers' Contractor. Prior to the commencement of any construction activity on the Premises under this Agreement, The Mountaineers shall cause its prime contractor(s) to secure and thereafter maintain in full force and effect for the period of construction, insurance as specified below.

9.7.1 Commercial General Liability (CGL) Insurance, including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Fire/Tenant Legal
- Employers Liability/Stop Gap

with a minimum limit of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage, except:

- \$1,000,000 each offense as respects Personal/Advertising Injury
- \$ 100,000 each occurrence as respects Fire/Tenant Legal
- \$1,000,000 each accident/employee as respects Employers Liability/Stop Gap.

9.7.2 Automobile Liability insurance, including coverage for owned, non-owned, leased, or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage.

9.7.3 Workers Compensation insurance in compliance with Title 51 of the Revised Code of Washington (RCW).

9.7.4. CGL and Automobile Liability insurance, which shall include the City of Seattle as an additional insured on a primary and non-contributory basis with all insurance and self-insurance the City maintains.

9.7.5 Insurance certification shall be provided to the City as specified in paragraph 9.5 (Evidence of Insurance).

ARTICLE 10. DAMAGE OR DESTRUCTION

If the Premises are damaged by fire or other casualty, the party insuring the Building shall make all insurance proceeds payable as a result of such casualty available to repair the damage to the Premises and the Building. The policyholder and the insurer shall adjust the loss and, with the Superintendent's concurrence and in accordance with approved construction documents, promptly commence such repairs as will restore the Premises (including the improvements therein) and the Building to

their condition immediately preceding the casualty as nearly as reasonably possible and provided that neither party shall be required to spend more than the available insurance proceeds plus any deductible. Notwithstanding the foregoing, if (i) more than fifty percent (50%) of the Building is damaged as a result of casualty; or (ii) repair and restoration cannot reasonably be completed within eighteen (18) months from the date of the casualty; or (iii) the casualty occurs during the final two (2) years of the initial Term or any Extended Term, then The Mountaineers may terminate this Agreement upon thirty (30) days' written notice to the City, specifying the effective date of such termination, and in such event, any insurance proceeds shall be equitably distributed between the parties. From the date of the casualty through completion of repairs, Rent shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as reasonably determined by the City, unless the casualty results from or is contributed to by the negligence of The Mountaineers or any of its officers, contractors, agents, invitees, guests, or employees, or The Mountaineers' breach of this Agreement, in which event there shall be no abatement. In the event of damage by casualty, The Mountaineers shall to the extent it deems necessary or desirable, at its sole cost and expense, repair all damage to its own personal property. The City shall not be liable to The Mountaineers for damages, compensation, or other sums for inconvenience, loss of business, or disruption arising from any repairs to or restoration of any portion of the Premises.

ARTICLE 11. COMPLIANCE WITH LAW

11.1 General Requirements. The Mountaineers, at no cost to the City, shall comply with all laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders and directives of their administrative agencies and the officers thereof, as such enactments now exist or are hereafter enacted or promulgated that are applicable to The Mountaineers use and occupancy of the Premises. Whenever The Mountaineers is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any of its officers, employees, contractors, subcontractors, agents, or invitees, The Mountaineers shall immediately desist from and/or prevent or correct such violation provided that The Mountaineers may contest any alleged violation in good faith by appropriate proceedings.

11.2 Licenses and Other Authorizations. The Mountaineers, at no cost to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof relating to The Mountaineers use, occupancy, or renovation of the Premises, and shall submit to DPR evidence of The Mountaineers' satisfaction of all such requirements prior to the commencement of any modification of the Premises. The Mountaineers shall be responsible for payment of all fees and charges incurred in obtaining any required permits or other governmental approvals and for obtaining a certificate of occupancy prior to the use or occupancy of any modified portion of the Premises.

11.3 Equality of Treatment. The Mountaineers will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

11.4 Americans with Disabilities Act Compliance. The Mountaineers, at no cost to the City, shall comply with all requirements of the Americans with Disabilities Act applicable to The Mountaineers use or occupancy of the Premises, as now or hereafter amended, and all rules and regulations implementing the same.

11.5 Lead-Based Paint and Asbestos Containing Materials. The Mountaineers shall comply with all applicable laws and regulations with regard to use and disposal of lead-based paint and asbestos containing materials.

ARTICLE 12. ENVIRONMENTAL PROTECTION.

The Mountaineers shall indemnify, hold harmless and defend the City from any costs, expenses, liabilities, fines, or penalties (including attorneys' fees) resulting from discharges, emissions, spills, storage, or disposal of Hazardous Substances on or from the Premises occurring during the term of this Agreement, or any other action by The Mountaineers or any of its agents, licensees or invitees giving rise to City liability, civil or criminal, or responsibility under federal, state, or local environmental laws. This provision shall survive the expiration or termination of this Agreement, and The Mountaineers' obligations hereunder shall apply whenever the City incurs costs or liabilities for The Mountaineers' actions. This indemnity shall not apply to any Hazardous Substances in, on, under, or about the Premises as of the date of this Agreement nor to any such materials that migrate onto or flow under the Premises during the term of this Agreement except for existing asbestos containing materials and lead based paint that The Mountaineers disposes of as part of any renovation or repair of the Premises or the Building. The City shall indemnify, hold harmless, and defend The Mountaineers from any costs, expenses, liabilities, fines, or penalties (including attorneys' fees) resulting from discharges, emissions, spills, storage, or disposal of Hazardous Substances in, on, under, or about the Premises as of the date of this Agreement or any Hazardous Substances that migrate onto or flow under the Premises during the term of this Agreement or any action by the City or any of its agents, licensees, or invitees giving rise to The Mountaineers liability, civil or criminal, or responsibility under federal, state or local environmental laws; provided, that this indemnity by the City shall not apply to lead-based paint or asbestos. This provision shall survive the expiration or termination of this Agreement, and the City's obligations hereunder shall apply whenever The Mountaineers incurs costs or liabilities for the City's actions.

"Hazardous Substance" means any hazardous, toxic, or dangerous waste, substance or material, including petroleum products, or any contaminant, pollutant, or

chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.

The Mountaineers understands and agrees that flammable or Hazardous Substances, including explosives, petroleum products, paint, solvents, and resins in excess of amount required for routine maintenance, are not allowed on the Premises without the express written permission of the City. In the event written permission to store the preceding materials is granted by the City, The Mountaineers shall dispose of such materials in a legal manner.

Prior to initiating any process requiring the use or storage of, or generating, on or adjacent to the leased premises, Hazardous Substances (other than normal and customary quantities of cleaning materials and office supplies), The Mountaineers covenants and agrees to obtain the City's prior approval. The City may consider approving the specific use, but only after The Mountaineers demonstrates to the satisfaction of the City that it has all necessary permits for operation and a Hazardous Substances emergency response plan.

The Mountaineers agrees to cooperate in any environmental audits conducted by the City's staff or independent third parties. The Mountaineers agrees to provide the City with notice of every governmental inspection of the Premises, notice of violation, and order to clean up contamination, within five (5) days after the receipt thereof by The Mountaineers. The Mountaineers agrees to permit the City to participate in all settlement or abatement discussions. In the event The Mountaineers fails to take remedial measures as stated in any final administrative or judicial order or decree signed by a state, federal, or local regulatory agency within ninety (90) days of such order or decree, the City may elect to perform such work, and The Mountaineers covenants and agrees to reimburse the City for all direct and indirect costs associated with the City's work provided that such work is necessitated by The Mountaineers use of Hazardous Substances and that such work is not related to any Hazardous Substances (other than asbestos containing materials and lead based paint in the Premises) in, on, under or about the Premises as of the date of this Agreement nor to any such materials that migrate onto or flow under the Premises during the term of this Agreement.

The Mountaineers further agrees to retain any and all liabilities arising from The Mountaineers' off-site disposal, handling, treatment, storage, or transportation of any Hazardous Substances, including petroleum products, removed from the Premises provided that this provision shall not apply to any Hazardous Substances in, on, under or about the Premises as of the date of this Agreement nor to any such materials that migrate onto or flow under the Premises during the term of this Agreement.

The indemnities, other duties, and obligations provided for in this Article shall survive the expiration or termination of this Agreement.

ARTICLE 13. LIENS AND ENCUMBRANCES

The Mountaineers shall keep the Premises free and clear of any liens and encumbrances arising out of or resulting from its use and occupancy of the Premises. If, because of any act or omission of The Mountaineers, any mechanic or other lien or order for payment of money shall be filed against the Premises or the improvements, The Mountaineers shall promptly notify the City of the same and, at The Mountaineers' sole expense, cause the same to be discharged or bonded within thirty (30) days after the date of notice of such filing. At the City's request, The Mountaineers shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

ARTICLE 14. RECORDS, BOOKS AND DOCUMENTS FOR CITY ACCESS AND AUDIT

14.1 The Mountaineers to Maintain Books and Records. The Mountaineers shall maintain its books, records, and documents in accordance with generally accepted accounting procedures and practices, and in such a manner as to sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, copying, or audit in King County by personnel duly authorized by DPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Within one hundred twenty (120) days after the end of each of The Mountaineers' fiscal years during the Term of this Agreement, The Mountaineers shall submit to DPR a financial report for its operations at Magnuson Park prepared by an independent certified public accounting firm.

14.2 Audit Right to be Ensured by The Mountaineers in Subordinate Use Agreements. The Mountaineers shall ensure that the inspection, audit, and copying rights described in Section 14.1 is a condition of any license, contract or other arrangement under which any person who is not an employee of The Mountaineers, or any other entity, is permitted to carry on a business in, on, or from the Premises.

14.3 Over and Under-payments. In the event that through any audit The Mountaineers is found to have made any overpayment or underpayment hereunder, the Superintendent shall notify The Mountaineers of the amount of the over- or under-payment. Any over-payment shall be a credit against any fees and charges subsequently due or shall be refunded to The Mountaineers, at its option; under-payments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice.

14.4 Retention of Records. The Mountaineers shall retain all books, records, documents, and other material relevant to this Agreement for five (5) years after the date of creation of such records, and make them available for inspection by persons authorized under this Agreement at such times as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 15. KEYS; ACCESS

The Mountaineers shall maintain keys to the Premises and may distribute keys to users as appropriate. DPR will retain two sets of keys to the Premises. The Mountaineers shall provide DPR with two copies of the key to any new lock or bolt installed on any exterior door. The Mountaineers will inform DPR of any access code for use with any alarm or security device installed in the Premises.

DPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, or improving the Premises, but nothing contained in this Agreement shall be construed as imposing any obligation on DPR to make any repair, alteration, or improvement. DPR shall provide 48 hours notice prior to entering the Premises and any entry shall not interfere with The Mountaineers' operations on the Premises.

ARTICLE 16. SIGNS OR ADVERTISING

16.1 Signs. The Mountaineers shall have the right, upon advance written approval from DPR, to install a sign on the Premises that identifies the same for The Mountaineers' purposes. Any such sign shall comply with the Sand Point Magnuson Park Design Guideline.

16.2 No Other Signage on Premises. Other than the approved exterior signage permitted by Sections 8.4 and 16.1, above, The Mountaineers shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere on exterior facing walls or outside the Premises, without first obtaining DPR's written consent thereto. Any consent so obtained from DPR shall be with the understanding and agreement that The Mountaineers shall remove the same at the expiration or earlier termination of the Term hereof and repair any damage to the Premises caused thereby. Notwithstanding the foregoing, The Mountaineers shall be permitted to place temporary signage for special events at DPR-approved locations so long as such signs do not remain in place for more than 12 hours in any consecutive 24-hour period or for more than four consecutive days.

ARTICLE 17. WASTEFUL AND DANGEROUS USE

The Mountaineers shall not commit or suffer any waste upon the Premises and shall not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Park Code as now existing or hereafter amended, or any activity that is inconsistent with the use authorized by this Agreement or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises unless The Mountaineers pays any increase.

ARTICLE 18. INSOLVENCY

Either (i) the appointment of a receiver to take possession of all or any part of The Mountaineers' assets, (ii) The Mountaineers' general assignment for the benefit of

creditors, or (iii) any action taken or suffered by The Mountaineers under any insolvency or bankruptcy act shall, if such appointment, assignment, or action continues for a period of thirty (30) days, constitute a breach of this Agreement by The Mountaineers, and DPR may, at its election and without notice, terminate this Agreement and in that event, DPR shall be entitled to immediate possession of the Premises. If any provision of this Article is contrary to any applicable law, such provision shall be of no force or effect.

ARTICLE 19. ASSIGNMENTS AND TRANSFERS

19.1 No Mortgaging or Transferring of Agreement or The Mountaineers' Interest Therein. Except as provided in Section 3.5, above, The Mountaineers shall not lease, transfer, assign, mortgage, hypothecate, or convey this Agreement or any interest therein, in whole or in part, or lease or license use or occupancy of the Premises or any part thereof or any of the rights or privileges or any portion of the Premises granted under this Agreement to any other person, firm or corporation without the Superintendent's prior written authorization, which authorization may be granted, withheld, or conditioned in each instance in the reasonable discretion of the Superintendent. With respect to any sublease of part of the ground level/basement portion of the Premises, consent shall be deemed to have been given if not denied in writing within ten (10) days. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises, are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings. Any assignee approved by the DPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by The Mountaineers. Any transfer of this Agreement from The Mountaineers by merger or consolidation shall not constitute an assignment for purposes of this Agreement. DPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through The Mountaineers.

19.2 Fees Due to City upon Transfer. If this Agreement is assigned, DPR's consent shall not constitute the recognition of such assignee or other party as a tenant or act as a release of The Mountaineers from the further performance of all of The Mountaineers' covenants and obligations under this Agreement; provided, that if such other user performs services that are the same or similar to those performed by The Mountaineers, or within the mission of The Mountaineers, then DPR shall not collect any additional fees for such other person or entity's use of the Premises. If DPR consents to any assignment or subletting (other than short term rentals), The Mountaineers shall pay to DPR a fee not to exceed twenty-three and one-half percent (23.5%) of one month's installment of Base Rent due (before any offset) to the City for expenses incurred in connection with processing of documents necessary to the giving of such consent and the additional monitoring and administration related to the same.

ARTICLE 20. TERMINATION

20.1 The Mountaineers Defaults in Performance Constitute Material Breach. In the event that The Mountaineers defaults in the performance of any of the terms, provisions, covenants, and agreements on The Mountaineers' part to be kept, observed, and performed under this Agreement for a period in excess of twenty (20) days after written notice of such default; or if The Mountaineers abandons, deserts, vacates, or otherwise removes its operations from the Premises for a period in excess of one-hundred eighty (180) days (except in the event of a casualty or during remodeling) without the prior consent of the Superintendent, then the City, at the option of the Superintendent at any time thereafter, may declare this Agreement to have been materially breached.

20.2 Process for Termination of Agreement. Either party may terminate this Agreement in the event that the other party has materially breached this Agreement and such breach has not been corrected to the reasonable satisfaction of the non-breaching party within thirty (30) days after notice of breach has been provided to such other party; provided, however, that if the nature of such party's obligation is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

20.3 Notice of Termination. Notice of termination pursuant to Subsection 20.2 shall be in writing, and shall be given by the party terminating this Agreement to the other party not less than five (5) days prior to the effective date of termination. Any termination under Section 20.2 must comply with and be completed in accordance with all procedures required by applicable state and local laws for termination of commercial tenancies.

20.4 Re-entry by City Upon Termination. Upon the termination of this Agreement, the City may re-enter said Premises using such legal force as may be required. Notwithstanding such re-entry and anything to the contrary in this Agreement, in the event of the termination of this Agreement because of the material breach thereof by The Mountaineers, The Mountaineers' liability for the Minimum and Base Rent provided herein shall not be extinguished unless and until the City relets the Premises for an equal or greater amount of gross rent. The City shall make commercially reasonable efforts to relet the Premises on commercially reasonable terms and otherwise mitigate its damages. If the City relets the Premises for an amount less than the amount of gross rent payable by The Mountaineers hereunder, The Mountaineers shall pay the difference between such rent and the rent reserved hereunder on a monthly basis as such sums become due.

ARTICLE 21. CITY'S CONTROL OF PREMISES AND VICINITY

All common and other facilities provided by the City in or about the Premises, including parking areas, are subject to the exclusive control and management by the City. Accordingly, provided that the City acts reasonably to minimize the impacts on use of and access to the Premises, the City may do any and all of the following (among other

activities in support of DPR or other municipal objectives), subject to 30 days' written notice for any permanent changes directly impacting The Mountaineers operations, all without incurring any liability whatsoever to The Mountaineers:

21.1 Change of Vicinity. Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises. Any such change shall not reduce the amount of unrestricted parking within 150 yards of the Building to less than 250 parking stalls (or such higher amount as may be required to obtain and maintain a certificate of occupancy) and shall not reduce the number, availability or access to designated "barrier free" parking stalls.

21.2 Traffic Regulation. Regulate all traffic in the vicinity of the Premises, including the operation and parking of vehicles of The Mountaineers and its invitees, employees, and patrons.

21.3 Display of Promotional Materials. Erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to the Premises.

21.4 Promulgation of Rules. Promulgate, from time to time, reasonable rules and regulations of general application regarding the use and occupancy of any DPR property including but not limited to the Premises.

21.5 Change of Businesses. Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

ARTICLE 22. VACATING OF PREMISES

Upon the expiration or earlier termination of this Agreement, all right, title, and interest of The Mountaineers in the Premises including, but not limited to, the improvements made thereto and fixtures installed therein shall vest in the City, without any action of either party hereto. In addition, at such time, The Mountaineers shall cause the Premises, together with all DPR-approved capital improvements made thereto and fixtures installed therein, to be in good order and condition, except for normal wear and tear and casualty not required to be repaired hereunder, unless the City otherwise consents. On or before the expiration or earlier termination of this Agreement, The Mountaineers shall remove from the Premises all of its personal property. If The Mountaineers fails to remove such personal property, DPR shall have the right, but not the obligation, to remove the same from the Premises, and to dispose of the same at its discretion and without recourse by The Mountaineers.

ARTICLE 23. NOTICES

Except as otherwise provided in this Agreement, all notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall

be sufficiently given if either served upon or delivered by courier or messenger to the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to The Mountaineers: The Mountaineers
 c/o Executive Director
 7700 Sand Point Way NE
 Seattle, WA 98115

If to the City: Magnuson Park
 c/o Manager
 6310 NE 74th Street; Suite 109E
 Seattle, WA 98115

or to such other address as either party hereto may specify for itself in a notice to the other. Notices sent by U.S. Mail shall be effective three (3) days after deposited in the mail or upon actual receipt if earlier.

ARTICLE 24. MISCELLANEOUS

24.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

24.2 Time. Time is of the essence regarding this Agreement.

24.3 Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

24.4 Binding Effect. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns, and subsidiaries.

24.5 Applicable Law. This Agreement shall be construed and interpreted in accordance with Washington law.

24.6 Jurisdiction and Venue. The jurisdiction and venue for any lawsuit between the parties arising out of this Agreement shall be in the Superior Court of the State of Washington for King County.

24.7 No Partnership or Joint Venture Created. The City does not by this Agreement, in any way or for any purpose, become a partner or joint venturer of The Mountaineers in the conduct of its business or otherwise.

24.8 City's Remedies Cumulative. The parties' rights under this Agreement are cumulative; failure on the part of either party to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. Each party shall have all rights and remedies given by law or in equity. The use of one remedy shall not be taken to exclude or waive the right to use another.

24.9 Amendments. No modification of this Agreement shall be binding upon the City or The Mountaineers unless reduced to writing and signed by an authorized representative of each of the parties hereto.

24.10 Force Majeure. Any delay in or failure of performance by City or The Mountaineers shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseen and beyond the control of the party ("Force Majeure").

24.11 No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

24.12 Effectiveness of Agreement. This Agreement shall become effective as an Agreement only when approved by the Seattle City Council and executed by an authorized representative of each party.

24.13 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by The Mountaineers, nor shall such a document waive any failure by The Mountaineers to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future. No action other than a written document from The Mountaineers specifically so stating shall constitute a waiver by The Mountaineers of any particular breach or default by the City, nor shall such a document waive any failure by the City to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any officer or employee of The Mountaineers may have of such breach, default, or noncompliance. The Mountaineers' failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

24.14 City's Consent. Whenever the City's consent or approval in writing is required under this Agreement, (a) The Mountaineers must obtain a consent or approval

in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may be withheld in the City's sole reasonable discretion. Requests for consent shall be processed through the Park Manager for Magnuson Park and Tenant shall be entitled to rely on the actions of the Park Manager.

No permission, consent, or approval of the City contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances, or Codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

24.15 Construction.

(a) The City agrees that during the period when The Mountaineers is renovating the Premises, The Mountaineers and its contractor shall be entitled to exclusive use of a reasonable portion of the common area adjacent to the Premises for a construction staging area and may fence off such area if it deems necessary or desirable. The Mountaineers and its contractor may place a construction trailer on the staging area and may store construction materials and tools in the area.

(b) The City acknowledges that the work The Mountaineers proposes to do relating to the Premises may include renovation of the common areas adjacent to the Premises for a landscaped entry, restriping the parking area and other common area improvements. The Mountaineers shall be solely responsible for such work but upon completion thereof, the City shall maintain the common areas at the same time and in the same manner that it maintains the balance of Magnuson Park.

(c) The City acknowledges that the work The Mountaineers proposes to do in the Building may require the occupant of the lower ground level to vacate the Building for a period of time during construction. The City shall ensure that the space is vacant and all personal property removed during the necessary periods. After completion of the renovation, the City shall prohibit the occupant of the lower level space from using the space in any manner that would (i) invalidate The Mountaineers' certificate of occupancy, (ii) involve the use of Hazardous Materials except those necessary for routine maintenance, or (iii) increase the risk of fire or increase the property insurance premium for the Building. In addition, if any person other than The Mountaineers obtains a certificate of occupancy for the lower ground level space, then, except as otherwise contemplated in this Agreement, The Mountaineers shall not use the Premises in any manner that would (i) invalidate that person's certificate of occupancy, or (ii) increase the risk of fire or increase the property insurance premium for the Building.

24.16 Exhibits. The following documents are hereby incorporated into this Agreement as if set forth in full herein:

- Exhibit "A": Site Plan of the Premises
- Exhibit "B": Legal Description
- Exhibit "C": Legal Description of Building Entry Area
- Exhibit "D": Depiction of Climbing Facilities
- Exhibit "E": List of Exclusions

ARTICLE 25. ENTIRE AGREEMENT

This Agreement and all exhibits pertaining to it constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties regarding the subject matter hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of the Agreement are not to be construed against any party on the basis of such party's preparation of the same.

IN WITNESS WHEREOF, the parties have executed this contract:

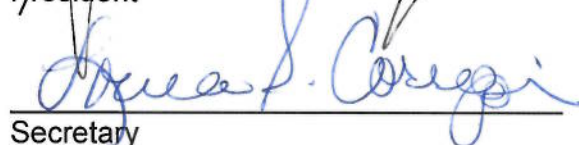
THE MOUNTAINEERS



President

4/24/10

Date




Secretary

4/23/10

Date

THE CITY OF SEATTLE



Timothy A. Gallagher, Superintendent
Department of Parks and Recreation

4/25/10

Date

THE MOUNTAINEERS

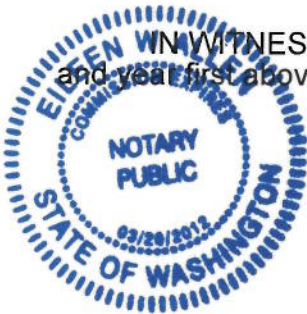
STATE OF WASHINGTON)

) ss:

COUNTY OF KING)

I certify that I know of or have satisfactory evidence that BRUCE WILKINS JR and LORNA S. CORRIGAN, the President and Secretary of the foregoing named corporation, signed this instrument, and on oath stated each was authorized to execute the instrument and acknowledged it as the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Eileen W. Allen
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My appointment expires March 20, 2012
Print Name EILEEN. W ALLEN

THE CITY OF SEATTLE

Department of Parks and Recreation

Timothy A. Gallagher, Superintendent, Parks and Recreation

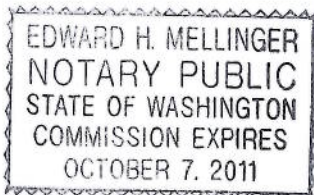
STATE OF WASHINGTON)

) ss:

COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Timothy A. Gallagher** signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the **Superintendent of the Department of Parks and Recreation of The City of Seattle** to be the free and voluntary act of The City of Seattle for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

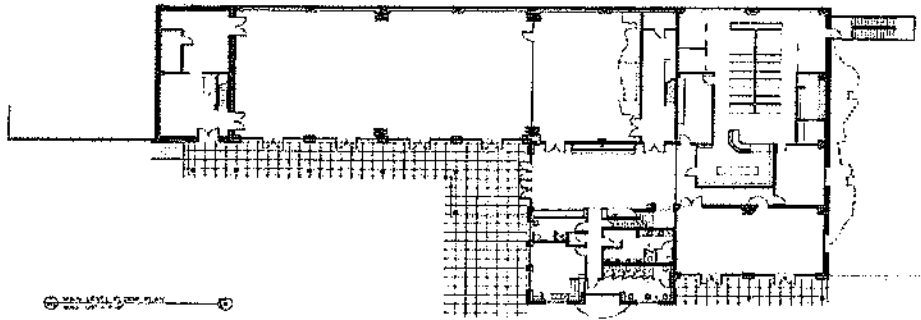


Edward H. Mellinger
NOTARY PUBLIC in and for the State of
Washington, residing at King County
My appointment expires 10/7/11
Print Name Edward H Mellinger

EXHIBIT A

SITE PLAN OF THE PREMISES

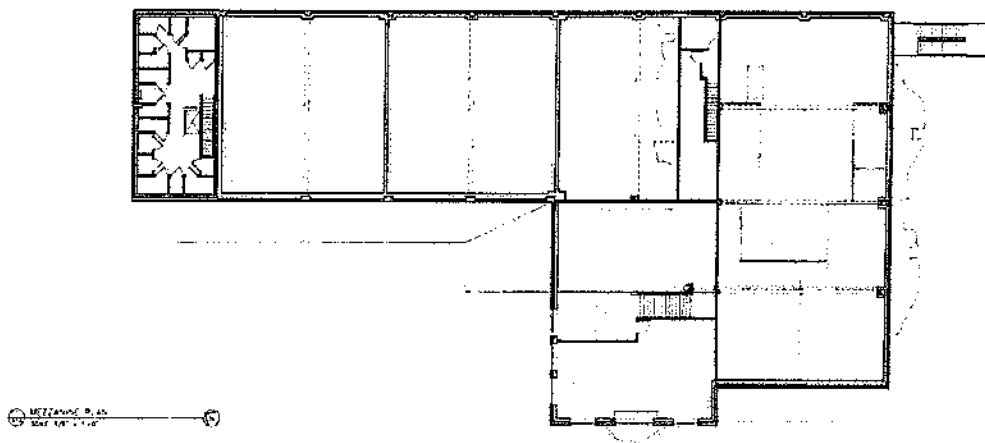
Main Floor Premises



THE MOUNTAINEERS
BUILDING 17, MOUNTAIN PARK
PARKWAY, MOUNTAIN PARK, GA 30153
BATTLE, GA 30153

MAIN LEVEL FLOOR PLAN
A1.2

Mezzanine

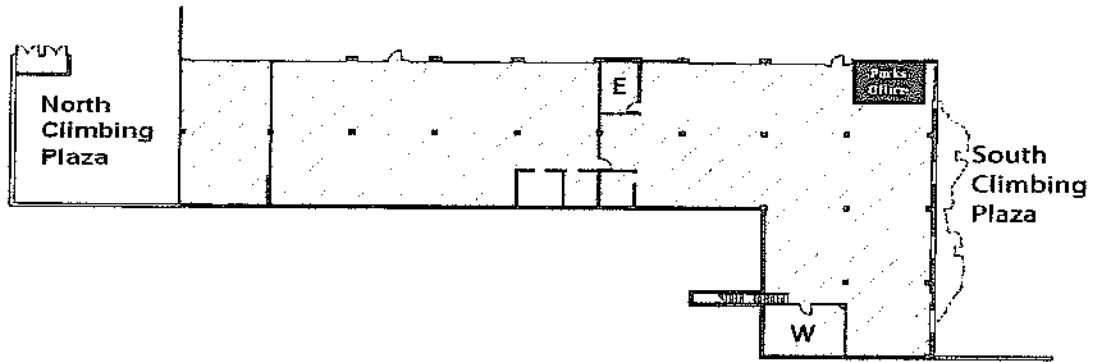


THE MOUNTAINEERS
BUILDING, 8700 MOUNTAIN VIEW
PARKWAY, SUITE 100
SEATTLE, WA 98148

MEZZANINE FLOOR PLAN

A1.3

Lower Level/Basement



On this page only the cross-hatched area is part of the Premises

EXHIBIT B

LEGAL DESCRIPTION

Those portions of the southwest quarter (SW 1/4) of the northwest quarter (NW 1/4) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 00° 48' 49" W on said east margin a distance of 304.41 feet to a point of curvature in said east margin the radial center of which bears S 89° 11' 11" W at a distance of 612.25 feet, thence north and west on said east margin on a curve concave to the south and west through a central angle of 26°51'36" an arc distance of 287.02 feet to the True Point of Beginning, thence leaving said east margin N 89° 57' 38" E a distance of 196.07 feet, thence N 00° 01' 33" W a distance of 230.96 feet, thence S 89° 57' 38" W a distance of 24.12 feet to a point of curvature of which the radial center bears N 00°02'22" W at a distance of 90.00 feet, thence continuing on the curve concave to the north and east through a central angle of 61°48'42" an arc distance of 97.10 feet, thence N 28° 13' 40" W a distance of 338.18 feet to a point of curvature of which the radial center bears S 61°46'20" W at a distance of 13.89 feet, thence continuing on the curve concave to the south an through a central angle of 127°02'10" arc distance of 30.80 feet to a point of compound curvature of which the radial center bears S 65°15'50" E at a distance of 221.89 feet, thence continuing on the curve concave to the southeast through a central angle of 20°40'59" an arc distance of 80.10 feet to a point of compound curvature of which the radial center bears S 85°56'49" E at a distance of 440.08 feet, thence continuing on the curve concave to the east through a central angle of 41°28'44" an arc distance of 318.60 feet to a non-tangent cusp, thence N 89°56'55" W a distance of 83.74 feet to a point on a curve on the east margin of Sand Point Way NE, the radial center of which bears N 66°27'12" E at a distance of 533.90 feet, thence continuing southeasterly on said east margin on the curve concave to the north and east through a central angle of 04°58'40" an arc distance of 46.38 feet, thence continuing on said east margin S 28°31'28" E a distance of 171.16 feet to a point of curvature in said east margin of which the radial center bears S 61°28'32" W at distance of 612.25 feet, thence continuing on said east margin, on a curve concave to the south and west through a central angle of 00°51'03" an arc distance of 9.09 feet to the True Point of Beginning.

EXHIBIT C

LEGAL DESCRIPTION OF BUILDING ENTRY AREA

That portion of Parcel 1_D, King County APN 0225049062 described as follows:

Commencing at the south west corner of said Parcel 1_D, thence N 89°57'38" E a distance of 196.07 feet, thence N 00°01'35" W a distance of 230.96 feet, thence S 89°57'38" W a distance of 24.12 feet to the beginning of a curve having a radial bearing of N 00°02'22" W, a radius of 90.00 feet and a central angle of 61°48'42", thence continuing on said curve concave to the north and east an arc distance of 97.10 feet, thence N 28°13' 40" W a distance of 338.18 feet to the beginning of a curve having a radial bearing of S 61°46'20" W, a radius of 13.89 feet and a central angle of 127°02'10", thence continuing on said curve concave to the south an arc distance of 30.80 feet to a point of compound curvature, having a radial bearing of S 65°15'50" E, a radius of 221.89 feet, and a central angle of 20°40'59", thence continuing on said curve concave to the southeast an arc distance of 80.10 feet to a point of compound curvature, having a radial bearing of S 85°56'49" E, a radius of 440.08 feet and a central angle of 4°59'05", thence continuing on said curve concave to the east an arc distance of 38.29 feet to the True Point of Beginning.

Thence N 61°21'00" E a distance of 28.73 feet to the northwesterly corner of Building #67 (7700 Sand Point Way NE),

Thence southerly along the westerly face of said Building #67 the following courses and distances to the southwesterly corner of said Building #67, S 28°39' E 107.0 feet, S 61° 21' W 54.0 feet, S 28°39' E 42.5 feet, N 61° 21' E 9.0 feet, S 28° 39' E 43.5 feet,

Thence leaving the face of Building #67 S 61°21'00" W a distance of 34.08 feet to an intersection point on a curve on the westerly property line of said Parcel 1_D, said curve having a radial bearing of N 62°52'22" E, a radius of 440.08 feet, and a central angle of 26 °11'44",

Thence northerly along said curve concave to the east an arc distance of 201.21 feet to the True Point of Beginning.

Containing: 7677.6 sf

EXHIBIT D

DEPICTION OF CLIMBING FACILITIES

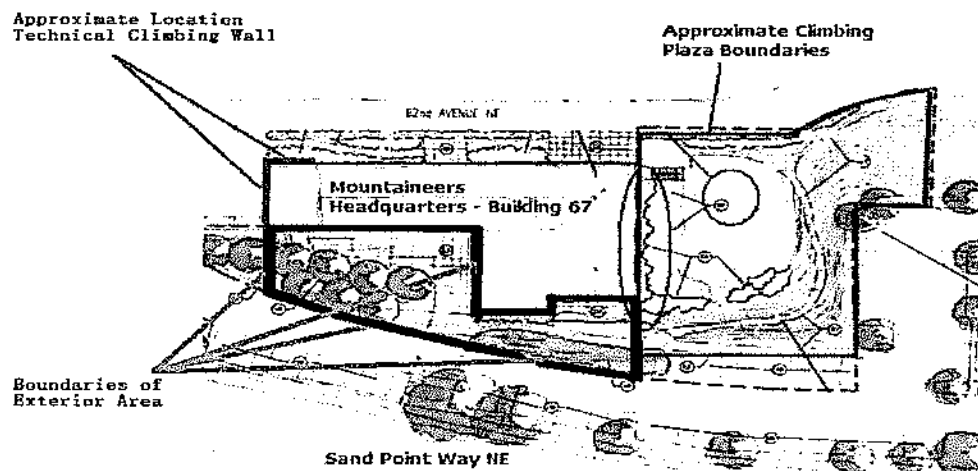


EXHIBIT E
LIST OF EXCLUSIONS

The following sources of sales revenue will be exempt from the 10% surcharge on Gross Receipts:

Dues paid by members for Mountaineers membership

Initiation fees paid by members upon joining

Reinstatement fees paid by members upon re-joining

Course fees and cancellation fees

Fees paid for lodging, events, and food at Mountaineers Recreational Properties

Admissions fees to Mountaineers productions including the Kitsap Forest Theatre productions and other events.

Bookstore wholesale and retail sales

Books Division sales and other revenue, including royalties on book sales

Library overdue charges, research fees and book sales

Donations to the Mountaineers or The Mountaineers Foundation made by members and non-members, or other outside entities, either by voluntary contribution or as the result of fundraising programs by either The Mountaineers or The Mountaineers Foundation.

Proceeds from the Gear Grab events and other Mountaineers-sponsored auctions

Room rental revenue made without City of Seattle Department of Parks Recreation assistance

Food and beverage sales

Service charges for equipment

Sales from Trail Passes, Sno Park Passes and other permits

Accounting service revenue

Mountaineer Magazine advertising revenue

Interest Income

**First Amendment to
Lease Agreement
Between
The City of Seattle
and
The Mountaineers**

This First Amendment to the 2006 Lease Agreement Between The City of Seattle and The Mountaineers is made and entered into by and between The City of Seattle ("City"), a municipal corporation of the State of Washington, acting by and through its Superintendent of Parks and Recreation and The Mountaineers, a Washington private not-for-profit corporation, on the date set forth below.

WHEREAS, on or about June 15, 2006, pursuant to Ordinance 122034, the City entered into an agreement with The Mountaineers (the "Agreement") pursuant to which The Mountaineers agreed to lease and renovate a portion of Building 67 located in Magnuson Park; and

WHEREAS, under the Agreement, The Mountaineers has a right of first refusal to lease all or a portion of the ground floor of Building 67 and has determined that it wishes to exercise such right;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby amend the Agreement as follows:

1. **Premises.** Paragraph 1 of Section 1.1 of the Agreement, Premises Description, is amended to read as:

1.1 Premises Description. The Mountaineers does hereby lease from the City and the City hereby leases to The Mountaineers (a) that certain interior portion of the building commonly known as BUILDING 67, Magnuson Park (the "Building"), consisting of 15,322 square feet, more or less (including the mezzanine area containing approximately 2,143 square feet) that lies above the lower ground floor of said Building, as depicted on Exhibit B-1 attached hereto; and (b) the lower ground floor of the Building (except for the office used by the City's parks department containing One Hundred Eighty-four (184) square feet which shall be retained by the City and is identified as the "Parks Office" on Exhibit B-2) which contains approximately 10,727 square feet of space as depicted on Exhibit B-2 attached hereto. The Mountaineers is granted an irrevocable license during the term of this Lease to use that portion of the exterior, landscaped areas adjacent to the west side of the Building, as legally described on Exhibit C-1 and depicted on Exhibit C-2. The portion of the Building leased to and the surrounding area licensed to The Mountaineers are collectively referred to herein as the "Premises". The Premises shall not include the climbing wall described in Section 8.4 below. The Premises are located at 7700 Sand Point Way NE, Seattle, King County Washington 98115, and the real property upon

7. **Counterparts.** This Amendment may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

For The Mountaineers

Mona West

9/24/09
Date

By Mona West

Its Executive Director

For the City

Timothy Gallagher

Timothy Gallagher, Superintendent
Department of Parks and Recreation

10/1/09
Date



EXHIBIT A

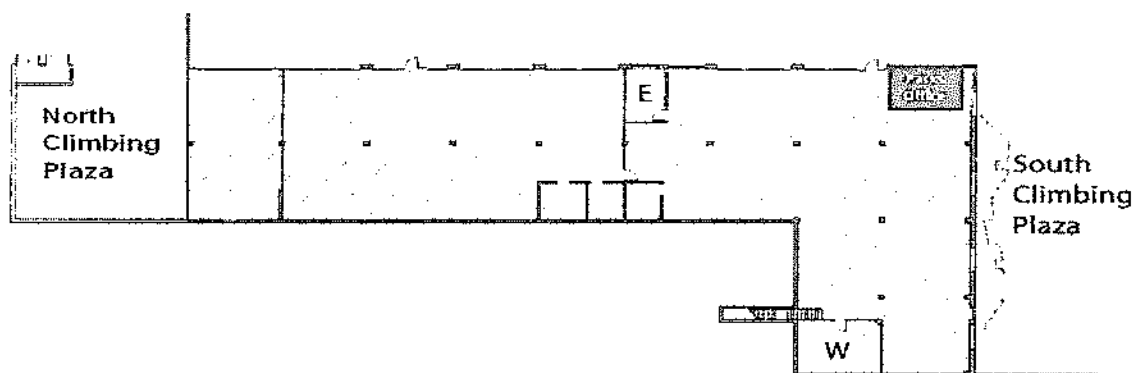
Legal Description of Parcel 1, Lot D

Those portions of the southwest quarter (SW 1/4) of the northwest quarter (NW 1/4) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 00° 48' 49" W on said east margin a distance of 304.41 feet to a point of curvature in said east margin the radial center of which bears S 89° 11' 11" W at a distance of 612.25 feet, thence north and west on said east margin on a curve concave to the south and west through a central angle of 26° 51' 36" an arc distance of 287.02 feet to the True Point of Beginning, thence leaving said east margin N 89° 57' 38" E a distance of 196.07 feet, thence N 00° 01' 33" W a distance of 230.96 feet, thence S 89° 57' 38" W a distance of 24.12 feet to a point of curvature of which the radial center bears N 00° 02' 22" W at a distance of 90.00 feet, thence continuing on the curve concave to the north and east through a central angle of 61° 48' 42" an arc distance of 97.10 feet, thence N 28° 13' 40" W a distance of 338.18 feet to a point of curvature of which the radial center bears S 61° 46' 20" W at a distance of 13.89 feet, thence continuing on the curve concave to the south an through a central angle of 127° 02' 10" arc distance of 30.80 feet to a point of compound curvature of which the radial center bears S 65° 15' 50" E at a distance of 221.89 feet, thence continuing on the curve concave to the southeast through a central angle of 20° 40' 59" an arc distance of 80.10 feet to a point of compound curvature of which the radial center bears S 85° 56' 49" E at a distance of 440.08 feet, thence continuing on the curve concave to the east through a central angle of 41° 28' 44" an arc distance of 318.60 feet to a non-tangent cusp, thence N 89° 56' 55" W a distance of 83.74 feet to a point on a curve on the east margin of Sand Point Way NE, the radial center of which bears N 66° 27' 12" E at a distance of 533.90 feet, thence continuing southeasterly on said east margin on the curve concave to the north and east through a central angle of 04° 58' 40" an arc distance of 46.38 feet, thence continuing on said east margin S 28° 31' 28" E a distance of 171.16 feet to a point of curvature in said east margin of which the radial center bears S 61° 28' 32" W at distance of 612.25 feet, thence continuing on said east margin, on a curve concave to the south and west through a central angle of 00° 51' 03" an arc distance of 9.09 feet to the True Point of Beginning.

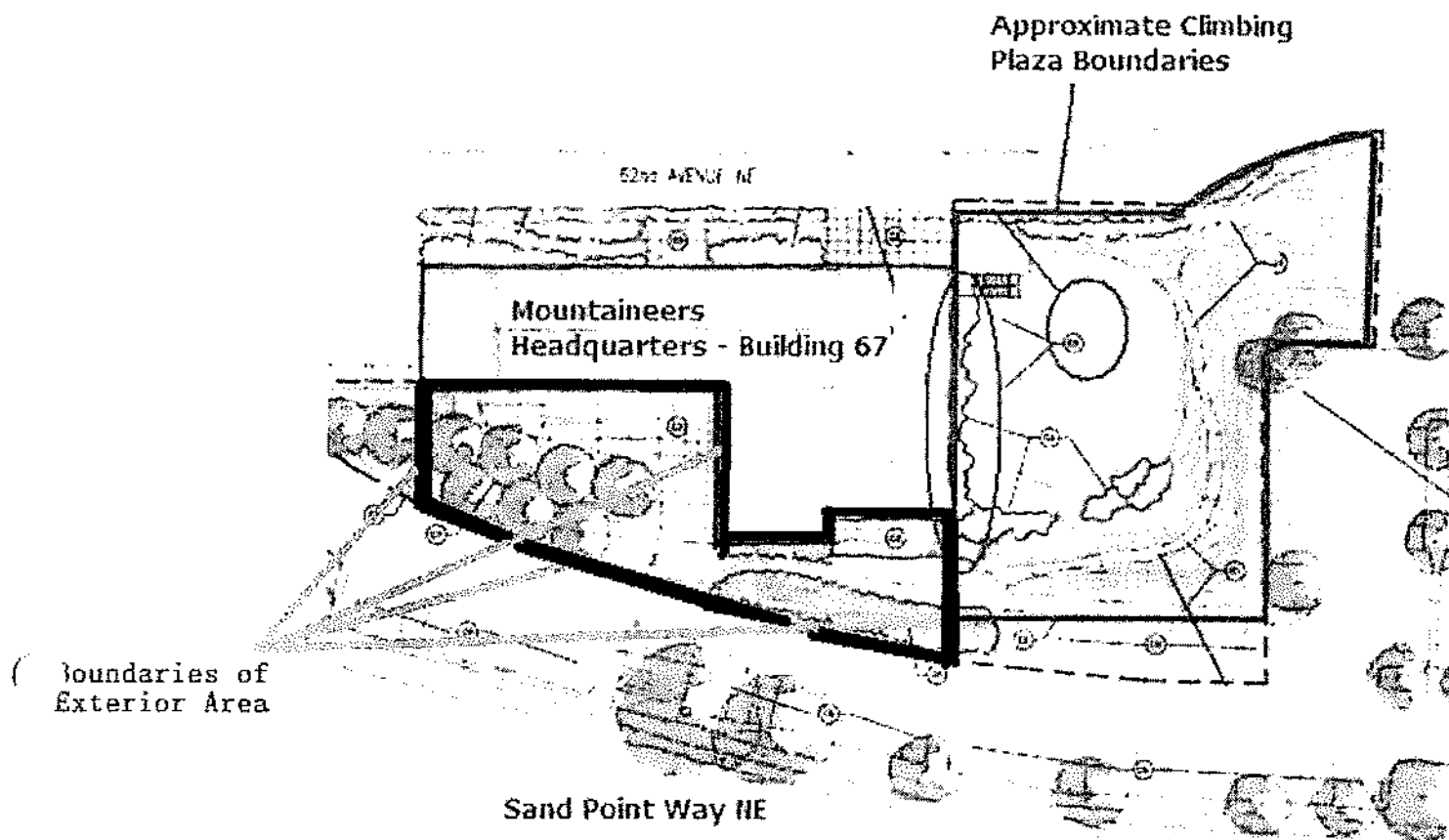
EXHIBIT B-2

Site Map of Ground Floor*



* Cross-hatched areas only constitute Ground Floor Premises

EXHIBIT C-2
Depiction Of Exterior Area



COPY

LEASE AGREEMENT
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
THE MOUNTAINEERS

CC062511-006

THIS LEASE AGREEMENT is made and entered into by and between **THE CITY OF SEATTLE** ("the City"), a first class city of the State of Washington, acting by and through its Superintendent of the Department of Parks and Recreation ("Superintendent"), and **THE MOUNTAINEERS**, a Washington private not-for-profit corporation ("The Mountaineers").

WHEREAS, the Seattle Department of Parks and Recreation (DPR) has jurisdiction over and manages Warren G. Magnuson Park, including the buildings therein; and

WHEREAS, The Mountaineers was founded in 1906 to explore, study, preserve and enjoy the natural beauty of the outdoors and has continuously engaged in recreational, educational, conservation and public outreach activities pursuant to that purpose; and

WHEREAS, DPR and The Mountaineers both work to educate the general public about recreation and to develop public programs; and

WHEREAS, The Mountaineers and DPR desire to collaborate in order to achieve their shared long-term vision and goals with respect to the development of recreation and education activities at Magnuson Park; and

WHEREAS, the parties agree that the public benefits from The Mountaineers' financial, activity, and program commitments to remodel and improve Building 67 and the surrounding area, construct a rock climbing plaza and other facilities, and establish an important community recreation, training, and conservation center at Magnuson Park, will be substantial; and

WHEREAS, The Mountaineers and DPR wish to enter into this Agreement for the purpose of setting forth the terms and conditions under which The Mountaineers will occupy and use portions of Building 67 and adjacent area, including the proposed terms and conditions under which the renovation project shall be financed, constructed, and operated;

NOW, THEREFORE, for and in consideration of the continuing services to be provided to the City, for payment of rent, maintenance and other value, and in further consideration of and subject to the mutual promises, terms, conditions and performances described herein, the parties agree as follows:

1.4 Acceptance of Premises. The Mountaineers has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by The Mountaineers hereunder. The Mountaineers accepts the Premises in their condition as of the Commencement Date AS IS, with all defects, and assumes all risk that one or more defects exist in the Premises, except as otherwise provided herein. The City makes no warranties or representations of any kind, express or implied, with respect to the condition of the Premises or their suitability for The Mountaineers' purposes other than as specified in this Agreement. The Mountaineers agrees that any express or implied representations or warranties made by or on behalf of the City prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever. The Mountaineers makes no warranties or representations of any kind, express or implied, with respect to its use and occupancy of the Premises or the improvements to be made thereto other than as specified in this Agreement. The City agrees that any express or implied representations or warranties made by or on behalf of The Mountaineers prior to the Commencement Date, unless expressly set forth in this Agreement, have been effectively revoked and withdrawn and have no force or effect whatsoever.

The Mountaineers agrees that the City shall have no liability or obligation as a result of any defect or condition of the Building or Premises, including without limitation latent defects, unless expressly set forth in this Agreement. The City shall have no obligation to undertake any repairs, maintenance or other work of any kind except as expressly set forth in this Agreement.

The Mountaineers and the City acknowledge that this Article has been specifically bargained for and that the City would not be willing to permit The Mountaineers to use and occupy the Premises on the terms and conditions set forth herein without The Mountaineers' agreement to the terms of this Article.

The Mountaineers acknowledges that copies of the Asbestos Survey at Naval Station Puget Sound, BUILDING 67 and the Lead Inspection Data, NAVSTA Puget Sound, Building Number 67 have been made available to it for inspection. The Mountaineers shall notify and provide information to all persons working in or about the Premises as to the availability of such documents if and to the extent required by applicable law. The City shall make available to The Mountaineers within two (2) days after execution of this Lease all documents in its possession or control relating to the condition of the Premises and Hazardous Substances (as defined in Section 12 below) in, on, under, or around the Premises together with any agreements with the prior owner relating to such matters. The Mountaineers shall have the right to terminate this Agreement if it is not satisfied in its sole discretion with the content of such reports and agreements.

1.5 Contingencies. The Mountaineers obligations hereunder are contingent on The Mountaineers' satisfaction or waiver, in its sole discretion, of the following contingencies:

Director or The Mountaineers determines that The Mountaineers has not achieved or is not reasonably calculated to achieve its fundraising objective by June 1, 2006, then either party shall notify the other of that determination and The Mountaineers' rights and obligations under this Agreement shall cease, but in such event, The Mountaineers shall have the right of first negotiation of a satisfactory lease with the City if the City receives any other offer to lease the Premises during the period from June 1, 2006, through December 1, 2006. If the parties are unable to negotiate a satisfactory agreement, the parties shall have no further obligations with respect to one another.

ARTICLE 3. USE

3.1 Purposes Authorized. The Premises are authorized to be used as a recreation training and community center, including activities such as classes, exhibitions and sales, regular and special meetings of The Mountaineers' membership, Board of Trustees, divisions, activities committees, etc., and other events related to the Premises' use as The Mountaineers main club facility, and for fundraising activities supporting the overall mission of The Mountaineers. Magnuson Park has limited capacity to handle multiple events with large numbers of expected attendees. Therefore, if The Mountaineers reasonably anticipates that more than 150 people will attend any event on the Premises, The Mountaineers shall provide the City with no less than 30 days advance written notice. If the City determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Mountaineers within five (5) business days after receipt of The Mountaineers' notice. Upon receipt of such notice, The Mountaineers must either reschedule the event or reduce the size of the event to less than 150 attendees. The Mountaineers shall not use the Premises for any other purpose without the Superintendent's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. If The Mountaineers requests consent to any additional use, the Superintendent shall be deemed to have approved the use unless it denies its consent in writing within twenty (20) days.

3.2 Management and Operations Plan. The Mountaineers shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), an annual plan for the management and operation of the Building. The first plan shall be due on or before the date that is 30 days prior to The Mountaineers' occupancy of the Premises for operational purposes, and subsequent plans shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable DPR facilities, but at a minimum, shall include a description of the then-scheduled upcoming programming; anticipated user fees/rental rates; and The Mountaineers' equal opportunity outreach program, if available. The City shall be deemed to have approved the plan (and all uses and events noted therein) unless it denies its consent in writing within twenty (20) days. The Mountaineers may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. The City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it denies its consent in writing within twenty (20) days.

per month.

4.2 Base Rent. In addition to the Minimum Rent, beginning on the tenth day of the first month immediately following The Mountaineers' receipt of an occupancy permit for the Premises, and on the tenth day of each month thereafter during the Term, The Mountaineers shall pay the City "Base Rent" in the amount of \$4,970 per month.

4.3 Adjustments to Minimum and Base Rent. Beginning on the fifth anniversary of the Commencement Date and every five years thereafter until the expiration or termination of this Agreement (each, a "Rent Adjustment Date"), Minimum and Base Rent (collectively referred to herein as "Rent") shall be adjusted upward only to reflect increases in the total noncompounded percentage change in the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor between the first and last years being adjusted; provided, however, that in no event shall Minimum Rent and Base Rent increase by more than four percent (4%) per year on a cumulative basis over the five year period. The City shall notify The Mountaineers in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly rent amount that will be due starting on such Rent Adjustment Date.

By way of example only, if the CPI on the commencement date of this Agreement is 100 and the CPI most recently issued prior to the first Rent Adjustment Date is 110 and the annual Rent due under this Agreement is \$60,000, then the total CPI adjustment would be 10% and annual Rent under this Agreement would increase to \$66,000 effective as of the Rent Adjustment Date. In no event shall the Rent, as adjusted for any period, be less than Rent payable during the immediately preceding period. In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation.

4.4 Additional Rent. The Mountaineers shall pay the City annually, as "Additional Rent", ten percent (10%) of Gross Receipts that are derived from the use and occupation of the Premises for non-Mountaineers sponsored events and events where merchandise is sold. All installment or credit sales shall be deemed to have been made for the full price on the date of sale regardless of when payment is received.

The term "Gross Receipts" does not mean or include sums raised through fund-raising events benefiting The Mountaineers solely; membership dues or fees; The Mountaineers' class tuition charges; the amount of money refunded to, and not merely credited to the account of customers who return or do not accept merchandise or services sold by The Mountaineers or any subtenant or concessionaire; returns to shippers or manufacturers; any discount allowed by The Mountaineers or any subtenant or concessionaire to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales. Gross Receipts shall also exclude the items described on Exhibit B attached hereto.

public programming resulting from the anticipated construction, donation, and public availability of the climbing plaza is \$2,665 per month, and The Mountaineers may offset that amount against the Base Rent and Additional Rent in equal installments on a monthly basis for the Initial Term and any Extended Term(s). Adjustments to the Climbing Plaza Public Program Rental Offset shall be made following the same method used to adjust Minimum and Base Rent, as described in paragraph 4.3.

4.8 Taxes. The Mountaineers shall pay to DPR monthly whatever leasehold excise tax is assessed pursuant to Chapter 82.29A RCW as a consequence of The Mountaineers' use and occupancy of the Premises under this Agreement. In addition, The Mountaineers shall pay before their delinquency, all other taxes that may be due and payable with respect to property owned by and the activities of The Mountaineers on the Premises to the extent failure to do so could result in a lien against the Premises.

4.9 Offset Inapplicable to Taxes. The reduction and offsetting of any Rent pursuant to Sections 4.5, 4.6 and 4.7 hereof shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of The Mountaineers. Unless The Mountaineers is exempt from the payment of leasehold excise taxes, all such taxes shall be payable only in cash or cash equivalents. The City shall not contest any application by The Mountaineers for an exemption from the leasehold excise tax.

4.10 Rent and Leasehold Excise Tax Payment Date and Address. Rent and leasehold excise tax due and payable under this Agreement shall be remitted on the tenth (10th) calendar day of each month during the term of this Agreement to the City at the address shown in Article 23 hereof, or to such other place as DPR may hereafter designate.

4.11 Late and Refused Payments. The Mountaineers acknowledges that late payment to the City of the Rent or any other sum due to the City hereunder will cause DPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of legal enforcement of this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if The Mountaineers fails to pay any sum after such amount is due to the City, The Mountaineers shall also pay to the City a rate of interest to be charged on delinquent accounts as established by Ordinance 117969, incorporated herein by reference from the due date until the payment date. In addition, The Mountaineers shall pay the City a Twenty Dollar (\$20.00) charge for each check refused payment for insufficient funds or any other reason.

ARTICLE 5. UTILITIES AND SERVICES

5.1 Utilities. Upon the Commencement Date, The Mountaineers shall be responsible for and shall ensure that all utility accounts associated with the Premises are transferred to The Mountaineers and that such transfers remain in effect on and through the date on which The Mountaineers surrenders the Premises. The City will provide whatever confirmation or assistance is necessary to transfer utility accounts to The Mountaineers' name. As part of the renovation of the Premises, The Mountaineers shall ensure that all utilities are separately metered. The Mountaineers shall pay, before delinquency, all charges incurred for or in connection with the providing of telephone, electricity, gas, oil, water, sewer,

in good operating condition throughout the term of this Agreement and are in good working condition upon termination.

6.4 The Mountaineers' Preventive Maintenance and Custodial Care Obligation. The Mountaineers shall implement, at no cost or expense to the City, a preventive maintenance and custodial care program for the Premises that is consistent with programs utilized in similar facilities and operations.

6.5 Intrusion Alarm Installation Obligation. The Mountaineers may provide and install on the Premises, at no cost to the City, an intrusion alarm system reasonably acceptable to DPR.

6.6 Fire Suppression Systems Installation Obligation. The Mountaineers shall install in all areas where cooking is to occur, hoods, vents, and fire suppression systems that have been approved by the Washington Survey and Rating Bureau to qualify for maximum fire insurance rate credit. The foregoing shall not apply to coffee makers, warming trays and microwave ovens. If the premium for fire insurance on the Premises is increased as a result of The Mountaineers' failure to install such an approved system, The Mountaineers shall be liable for and shall promptly pay, upon the City's request, the increase.

6.7 Joint Annual Inspection of Premises; Remedial Action Obligation. The Mountaineers shall participate in an annual inspection of the Premises with DPR and shall take any and all action that is consistent with the terms of this Lease that DPR may specify as necessary to maintain and operate the Premises in a clean and safe manner.

6.8 City Remedy Upon The Mountaineers' Failure to Maintain Premises. If The Mountaineers fails to maintain the Premises in good order, condition, and repair, DPR shall give The Mountaineers notice to undertake such work as is reasonably required to so maintain the Premises. If The Mountaineers fails to commence such work within thirty (30) calendar days after the effective date of the City's notice and to diligently prosecute it to completion, then DPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice The Mountaineers for the costs reasonably incurred by the City in connection therewith. DPR shall have no liability to The Mountaineers for any damage, inconvenience, or interference with The Mountaineers' use of the Premises as a result of the City's performing any such work, except to the extent of its or its agents or contractors negligence or intentional misconduct.

6.9 Climbing Wall. The Mountaineers shall not be required to perform repairs or maintenance on the climbing wall and DPR shall be solely responsible for repair and maintenance of the climbing wall described in Section 8.4 below. The Mountaineers shall reimburse DPR for the reasonable costs incurred by DPR for such repair and maintenance within thirty (30) days after receipt of an invoice and supporting documentation of the costs incurred. Specifically with respect to the climbing wall, but without in any way limiting the generality of DPR's overall maintenance and repair obligations, DPR shall routinely inspect the climbing wall to ensure that it is in a suitable condition for its intended purpose.

8.4 Climbing Wall. The Mountaineers shall construct the climbing wall adjacent to the Premises at The Mountaineers' expense. Upon completion of the climbing wall, The Mountaineers shall donate the climbing wall to DPR. The Mountaineers shall be permitted to design, install, and replace as necessary signage reasonably approved by DPR indicating that the climbing wall was donated by The Mountaineers but is owned and operated by DPR. The Mountaineers shall have the right to exclusive use of the climbing wall during classes and programs conducted by The Mountaineers as identified in the annual Management and Operations Plan described in Section 3.2. The Mountaineers shall not be required to supervise the general public's use of the climbing wall or provide instruction to members of the general public. No person shall be permitted entry onto the roof of the Building from the climbing wall. The Mountaineers and DPR shall jointly develop and post rules and regulations relating to the use of the wall including a disclaimer of liability in such form as may be recommended by counsel to The Mountaineers from time to time. The Mountaineers may enclose the climbing wall behind a fence or otherwise deny public access to the climbing wall if use of the wall causes damage to the Building or the roof, the wall is repeatedly damaged or defaced (unless the City pays to repair such damage), or The Mountaineers is held liable for any injury arising out of use of the climbing wall. During times when public access to the climbing wall is denied, the Climbing Plaza Public Program Rental Offset described in Section 4.7 will be suspended and the Public Program Rental Offset described in Section 4.6 will be reduced on a pro rata basis. DPR shall not make any changes to the climbing wall without prior approval from The Mountaineers. The Mountaineers and DPR shall each designate a person who is responsible for coordinating with the other party with respect to the use of the climbing wall.

ARTICLE 9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification. Except as otherwise provided herein, The Mountaineers does hereby release and, to the fullest extent permitted by law, shall defend, indemnify, and hold the City harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions, or damages of any sort whatsoever arising out of The Mountaineers' use and occupancy of the Premises and the common areas of Magnuson Park for The Mountaineers' officially sponsored activities in connection with this Agreement, including any violation of any law, administrative rule or regulation. In furtherance of these obligations, and only with respect to the City, The Mountaineers waives any immunity it may have under any industrial insurance, worker's compensation, disability, employee benefit, or similar laws. The Mountaineers acknowledges that the foregoing waiver of immunity was mutually negotiated. This indemnity obligation and waiver shall not extend to any claims arising out of or relating to (a) the use of the climbing wall by any person who is not at the time engaged in an event sponsored and supervised by The Mountaineers, or (b) any pre-existing contamination or Hazardous Substances in, on or about the Premises as of the date hereof, or (c) any claims arising from the acts or omissions, negligence or willful misconduct of the City or its agents or employees.

The City does hereby release and, to the fullest extent permitted by law, shall defend, indemnify, and hold The Mountaineers harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including

9.3.2 Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage.

9.3.3. Workers Compensation insurance in compliance with Title 51 of the Revised Code of Washington (RCW).

9.3.4 All risks property insurance on business personal property on a replacement cost basis with a waiver of subrogation in favor of the City. The placement and storage of business personal property in the Premises shall be the responsibility and at the sole risk of The Mountaineers.

9.4 Terms and Conditions. (Not Applicable to Workers Compensation Insurance)

9.4.1 Insurance shall be issued by an insurer rated A- VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus lines by a Washington State licensed Surplus lines broker.

9.4.2 Liability insurance shall include the City of Seattle as an additional insured on a primary and non-contributory basis (up to the limits of such insurance) with all insurance and self-insurance the City maintains.

9.4.3 Any self-insured retention of more than One Hundred Thousand Dollars (\$100,000) is subject to the City's reasonable approval; provided, that The Mountaineers shall provide the City with a statement indicating the dollar value of both 15% of its working capital and 5% of its total assets. If either value is less than \$50,000, then The Mountaineers agrees that no self-insured retention will exceed the lesser value.

9.4.4 The City may amend the requirements for coverage and/or limits upon ninety (90) days' notice but not more frequently than once every five (5) years and with reasonable justification which shall establish that the changed coverage is consistent with the coverage required by commercial landlords on comparable facilities.

9.4.5 Insurance shall not be cancelled without written notice of such cancellation being hand-delivered or mailed to the City not less than forty-five (45) days prior to the cancellation date, except thirty (30) days as respects insurance procured under the provisions of chapter 48.15 RCW (Surplus Lines) and ten (10) days as respects cancellation for non-payment of premium.

9.5 Evidence of Insurance. Certification of insurance coverage required under this Agreement shall be delivered to each of the following prior to the Commencement Date:

Magnuson Park
c/o Manager
6310 NE 74th Street; Suite 109E
Seattle, WA 98115

The City of Seattle
Risk Management Division
P O Box 94669
Seattle, WA 98124-4669

Mountaineers shall cause its prime contractor(s) to secure and thereafter maintain in full force and effect for the period of construction, insurance as specified below.

9.7.1 Commercial General Liability (CGL) Insurance, including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Fire/Tenant Legal
- Employers Liability/Stop Gap

with a minimum limit of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage, except:

- \$1,000,000 each offense as respects Personal/Advertising Injury
- \$ 100,000 each occurrence as respects Fire/Tenant Legal
- \$1,000,000 each accident/employee as respects Employers Liability/Stop Gap.

9.7.2 Automobile Liability Insurance, including coverage for owned, non-owned, leased, or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage.

9.7.3 Workers Compensation insurance in compliance with Title 51 of the Revised Code of Washington (RCW).

9.7.4. CGL and Automobile Liability Insurance, which shall include the City of Seattle as an additional insured on a primary and non-contributory basis with all insurance and self-insurance the City maintains.

9.7.5 Insurance certification shall be provided to the City as specified in paragraph 9.5 (Evidence of Insurance).

ARTICLE 10. DAMAGE OR DESTRUCTION

If the Premises are damaged by fire or other casualty, the party insuring the Building shall make all insurance proceeds payable as a result of such casualty available to repair the damage to the Premises and the Building. The policyholder and the insurer shall adjust the loss and, with the Superintendent's concurrence and in accordance with approved construction documents, promptly commence such repairs as will restore the Premises (including the improvements therein) and the Building to their condition immediately preceding the casualty as nearly as reasonably possible and provided that neither party shall be required to spend more than the available insurance proceeds plus any deductible.

Notwithstanding the foregoing, if (i) more than fifty percent (50%) of the Building is damaged as a result of casualty; or (ii) repair and restoration cannot reasonably be

11.4 Americans with Disabilities Act Compliance. The Mountaineers, at no cost to the City, shall comply with all requirements of the Americans With Disabilities Act applicable to The Mountaineers use or occupancy of the Premises, as now or hereafter amended, and all rules and regulations implementing the same.

11.5 Lead-Based Paint and Asbestos Containing Materials. The Mountaineers shall comply with all applicable laws and regulations with regard to use and disposal of lead-based paint and asbestos containing materials.

ARTICLE 12. ENVIRONMENTAL PROTECTION.

The Mountaineers shall indemnify, hold harmless and defend the City from any costs, expenses, liabilities, fines, or penalties (including Attorneys fees) resulting from discharges, emissions, spills, storage, or disposal of Hazardous Substances on or from the Premises occurring during the term of this Agreement, or any other action by The Mountaineers or any of its agents, licensees or invitees giving rise to City liability, civil or criminal, or responsibility under federal, state, or local environmental laws. This provision shall survive the expiration or termination of this Agreement, and The Mountaineers' obligations hereunder shall apply whenever the City incurs costs or liabilities for The Mountaineers' actions. This indemnity shall not apply to any Hazardous Substances in, on, under, or about the Premises as of the date of this Agreement nor to any such materials that migrate onto or flow under the Premises during the term of this Agreement except for existing asbestos containing materials and lead based paint that The Mountaineers disposes of as part of any renovation or repair of the Premises or the Building. The City shall indemnify, hold harmless, and defend The Mountaineers from any costs, expenses, liabilities, fines, or penalties (including Attorneys fees) resulting from discharges, emissions, spills, storage, or disposal of Hazardous Substances in, on, under, or about the Premises as of the date of this Agreement or any Hazardous Substances that migrate onto or flow under the Premises during the term of this Agreement or any action by the City or any of its agents, licensees, or invitees giving rise to The Mountaineers liability, civil or criminal, or responsibility under federal, state or local environmental laws; provided, that this indemnity by the City shall not apply to lead-based paint or asbestos. This provision shall survive the expiration or termination of this Agreement, and the City's obligations hereunder shall apply whenever The Mountaineers incurs costs or liabilities for the City's actions.

"Hazardous Substance" means any hazardous, toxic, or dangerous waste, substance or material, including petroleum products, or any contaminant, pollutant, or chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.

The Mountaineers understands and agrees that flammable or Hazardous Substances, including explosives, petroleum products, paint, solvents, and resins in excess of amount required for routine maintenance, are not allowed on the Premises without the express written permission of the City. In the event written permission to store the preceding materials is granted by the City, The Mountaineers shall dispose of such materials in a legal manner.

14.1 The Mountaineers to Maintain Books and Records. The Mountaineers shall maintain its books, records, and documents in accordance with generally accepted accounting procedures and practices, and in such a manner as to sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, copying, or audit in King County by personnel duly authorized by DPR, City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Within one hundred twenty (120) days after the end of each of The Mountaineers' fiscal years during the Term of this Agreement, The Mountaineers shall submit to DPR a financial report for its operations at Magnuson Park prepared by an independent certified public accounting firm.

14.2 Audit Right to be Ensured by The Mountaineers in Subordinate Use Agreements. The Mountaineers shall ensure that the inspection, audit, and copying rights described in Section 14.1 is a condition of any license, contract or other arrangement under which any person who is not an employee of The Mountaineers, or any other entity, is permitted to carry on a business in, on, or from the Premises.

14.3 Over and Under-payments. In the event that through any audit The Mountaineers is found to have made any overpayment or underpayment hereunder, the Superintendent shall notify The Mountaineers of the amount of the over- or under-payment. Any over-payment shall be a credit against any fees and charges subsequently due or shall be refunded to The Mountaineers, at its option; under-payments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice.

14.4 Retention of Records. The Mountaineers shall retain all books, records, documents, and other material relevant to this Agreement for five (5) years after the date of creation of such records, and make them available for inspection by persons authorized under this Agreement at such times as the City may require. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 15. KEYS; ACCESS

The Mountaineers shall maintain keys to the Premises and may distribute keys to users as appropriate. DPR will retain two sets of keys to the Premises. The Mountaineers shall provide DPR with two copies of the key to any new lock or bolt installed on any exterior door. The Mountaineers will inform DPR of any access code for use with any alarm or security device installed in the Premises.

DPR shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, or improving the Premises, but nothing contained in this Agreement shall be construed as imposing any obligation on DPR to make any repair, alteration, or improvement. DPR shall provide 48 hours notice prior to entering the Premises and any entry shall not interfere with The Mountaineers' operations on the Premises.

reasonable discretion of the Superintendent. This prohibition against transfers and assignments includes any transfer or assignment by operation of law. The rights and privileges granted hereunder, and the Premises, are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings. Any assignee approved by the DPR must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by The Mountaineers. Any transfer of this Agreement from The Mountaineers by merger or consolidation shall not constitute an assignment for purposes of this Agreement. DPR consent to any assignment or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment or transfer, and the terms of such consent shall be binding upon any person or entity using or occupying the Premises by, under, or through The Mountaineers.

19.2 Fees Due to City upon Transfer. If this Agreement is assigned, DPR's consent shall not constitute the recognition of such assignee or other party as a tenant or act as a release of The Mountaineers from the further performance of all of The Mountaineers' covenants and obligations under this Agreement; provided, that if such other user performs services that are the same or similar to those performed by The Mountaineers, or within the mission of The Mountaineers, then DPR shall not collect any additional fees for such other person or entity's use of the Premises. If DPR consents to any assignment or subletting (other than short term rentals). The Mountaineers shall pay to DPR a fee not to exceed twenty-three and one-half percent (23.5%) of one month's installment of Base Rent due (before any offset) to the City for expenses incurred in connection with processing of documents necessary to the giving of such consent and the additional monitoring and administration related to the same.

ARTICLE 20. TERMINATION

20.1 The Mountaineers Defaults in Performance Constitute Material Breach. In the event that The Mountaineers defaults in the performance of any of the terms, provisions, covenants, and agreements on The Mountaineers' part to be kept, observed, and performed under this Agreement for a period in excess of twenty (20) days after written notice of such default; or if The Mountaineers abandons, deserts, vacates, or otherwise removes its operations from the Premises for a period in excess of 180 days (except in the event of a casualty or during remodeling) without the prior consent of the Superintendent, then the City, at the option of the Superintendent at any time thereafter, may declare this Agreement to have been materially breached.

20.2 Process for Termination of Agreement. Either party may terminate this Agreement in the event that the other party has materially breached this Agreement and such breach has not been corrected to the reasonable satisfaction of the non-breaching party within thirty (30) days after notice of breach has been provided to such other party; provided, however, that if the nature of such party's obligation is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

21.5 Change of Businesses. Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

ARTICLE 22. VACATING OF PREMISES

Upon the expiration or earlier termination of this Agreement, all right, title, and interest of The Mountaineers in the Premises including, but not limited to, the improvements made thereto and fixtures installed therein shall vest in the City, without any action of either party hereto. In addition, at such time, The Mountaineers shall cause the Premises, together with all DPR-approved capital improvements made thereto and fixtures installed therein, to be in good order and condition, except for normal wear and tear and casualty not required to be repaired hereunder, unless the City otherwise consents. On or before the expiration or earlier termination of this Agreement, The Mountaineers shall remove from the Premises all of its personal property. If The Mountaineers fails to remove such personal property, DPR shall have the right, but not the obligation, to remove the same from the Premises, and to dispose of the same at its discretion and without recourse by The Mountaineers.

ARTICLE 23. NOTICES

Except as otherwise provided in this Agreement, all notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either served upon or delivered by courier or messenger to the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to The Mountaineers:	The Mountaineers c/o Executive Director Before Occupancy: 300 Third Avenue West Seattle, WA 98119 After Occupancy: At the Premises
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If to the City:	Magnuson Park c/o Manager 6310 NE 74 th Street; Suite 109E Seattle, WA 98115
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or to such other address as either party hereto may specify for itself in a notice to the other. Notices sent by U.S. Mail shall be effective three (3) days after deposited in the mail or upon actual receipt if earlier.

ARTICLE 24. MISCELLANEOUS

24.1 Captions. The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

24.12 Effectiveness of Agreement. This Agreement shall become effective as an Agreement only when approved by the Seattle City Council and executed by an authorized representative of each party.

24.13 No Waivers. No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by City of any particular breach or default by The Mountaineers, nor shall such a document waive any failure by The Mountaineers to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future. No action other than a written document from The Mountaineers specifically so stating shall constitute a waiver by The Mountaineers of any particular breach or default by the City, nor shall such a document waive any failure by the City to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any officer or employee of The Mountaineers may have of such breach, default, or noncompliance. The Mountaineers' failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

24.14 City's Consent. Whenever the City's consent or approval in writing is required under this Agreement, (a) The Mountaineers must obtain a consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may be withheld in the City's sole reasonable discretion.

No permission, consent, or approval of the City contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances, or Codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

24.15 Construction.

(a) The City agrees that during the period when The Mountaineers is renovating the Premises, The Mountaineers and its contractor shall be entitled to exclusive use of a reasonable portion of the common area adjacent to the Premises for a construction staging area and may fence off such area if it deems necessary or desirable. The Mountaineers and its contractor may place a construction trailer on the staging area and may store construction materials and tools in the area.

(b) The City acknowledges that the work The Mountaineers proposes to do relating to the Premises may include renovation of the common areas adjacent to the Premises for a landscaped entry, restriping the parking area and other common area improvements. The Mountaineers shall be solely responsible for such work but upon completion thereof, the City shall maintain the common areas at the same time and in the same manner that it maintains the balance of Magnuson Park.

THE MOUNTAINEERS

William E. Peters
President

6/1/06
Date

[Signature]
Secretary

6/1/06
Date

THE CITY OF SEATTLE

Kenneth R. Bounds
Kenneth R. Bounds, Superintendent
Department of Parks and Recreation

6/15/06
Date

Exhibit A
Legal Description of Exterior Area

(Front Yard Description)

That portion of Parcel 1_D, King County APN 0225049062 described as follows:

Commencing at the south west corner of said Parcel 1_D, thence N 89°57'38" E a distance of 196.07 feet, thence N 00°01'35" W a distance of 230.96 feet, thence S 89° 57' 38" W a distance of 24.12 feet to the beginning of a curve having a radial bearing of N 00°02'22" W , a radius of 90.00 feet and a central angle of 61°48'42", thence continuing on said curve concave to the north and east an arc distance of 97.10 feet, thence N 28° 13' 40" W a distance of 338.18 feet to the beginning of a curve having a radial bearing of S 61°46'20" W , a radius of 13.89 feet and a central angle of 127°02'10", thence continuing on said curve concave to the south an arc distance of 30.80 feet to a point of compound curvature, having a radial bearing of S 65°15'50" E , a radius of 221.89 feet, and a central angle of 20°40'59", thence continuing on said curve concave to the southeast an arc distance of 80.10 feet to a point of compound curvature, having a radial bearing of S 85°56'49" E , a radius of 440.08 feet and a central angle of 4°59'05", thence continuing on said curve concave to the east an arc distance of 38.29 feet to the **True Point of Beginning**.

Thence N 61°21'00" E a distance of 28.73 feet to the northwesterly corner of Building #67 (7700 Sand Point Way NE),

Thence southerly along the westerly face of said Building #67 the following courses and distances to the southwesterly corner of said Building #67,

S 28°39' E 107.0 feet,

S 61°21' W 54.0 feet,

S 28°39' E 42.5 feet,

N 61°21' E 9.0 feet,

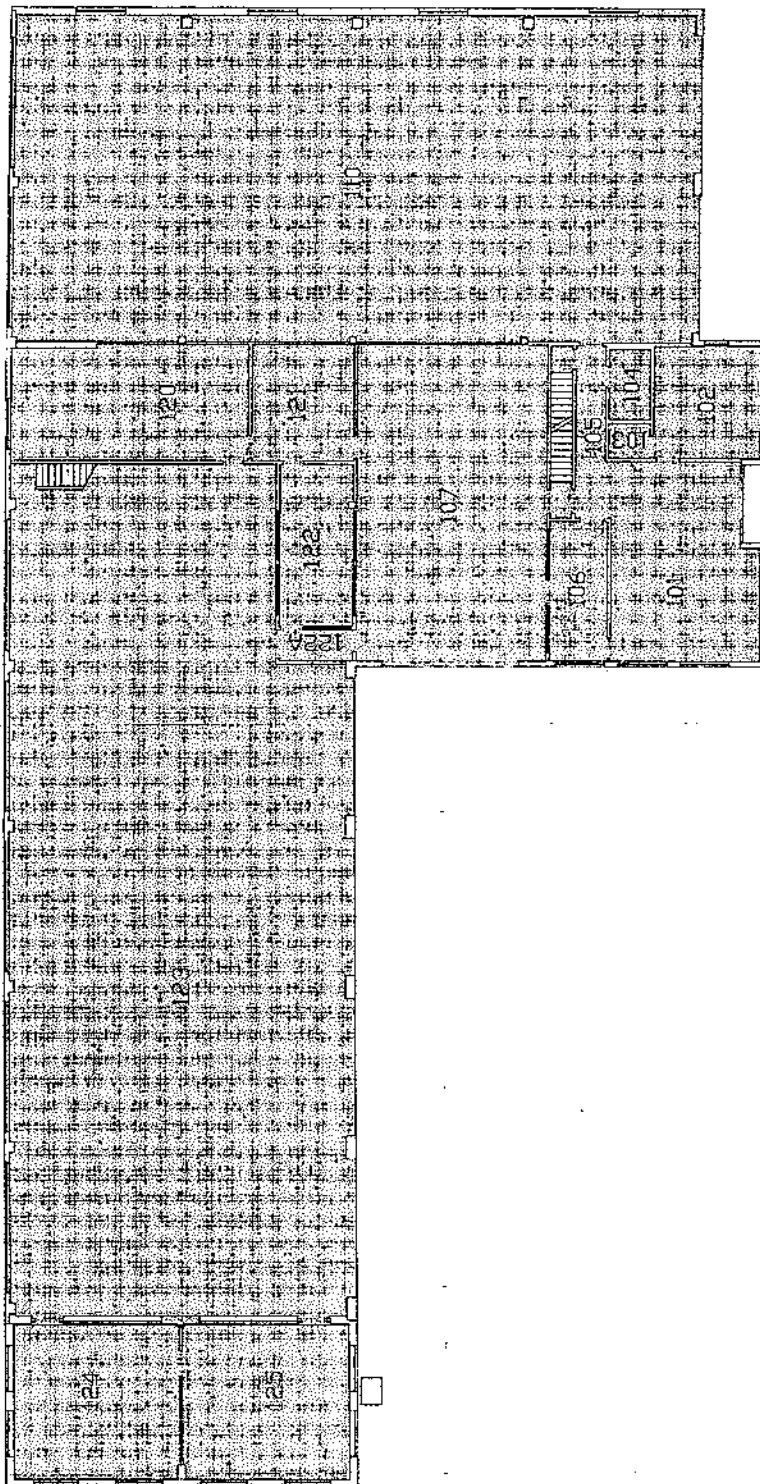
S 28°39' E 43.5 feet,

Thence leaving the face of Building #67 S 61°21'00" W a distance of 34.08 feet to an intersection point on a curve on the westerly property line of said Parcel 1_D,

Said curve having a radial bearing of N 62°52'22" E, a radius of 440.08 feet, and a central angle of 26°11'44",

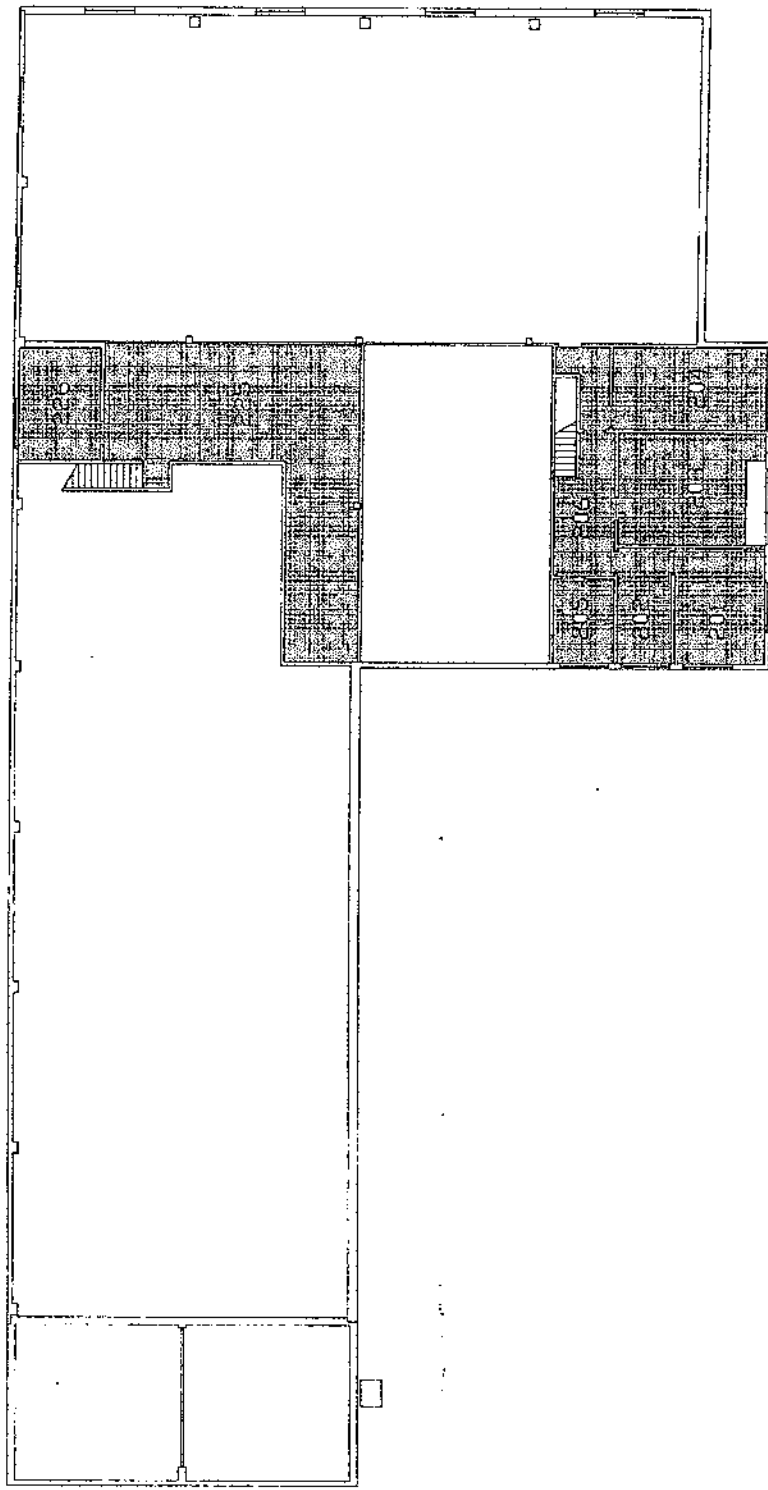
Thence northerly along said curve concave to the east an arc distance of 201.21 feet to the **TPOB**.

Containing: 7677.6 sf



DEPARTMENT OF THE NAVY NAVAL STATION PUGET SOUND		BLDG 67 UPPER FLOOR	
TRANSPORTATION		SH 2 OF 3	
DRAWN D. A. BEZDELL	CHECKED H. W. FLEISCH	APPROVED LORD R. J. COVANN	SCALE 1/8" = 1'-0"

56213



DEPARTMENT OF THE NAVY	
NAVAL STATION PUGET SOUND	
TRANSPORTATION	
DRAWN J. A. DEZELL	BLDG 67
CHECKED H. V. FLITGER	MEZZANINE
APPROVED LCDR R. J. COWAN	SH 3 OF 3
SCALE 1/8" = 1'-0"	56214

Exhibit B
LIST OF EXCLUSIONS FROM SECTION 4.4

The following sources of sales revenue will be exempt from the **10% surcharge on Gross Receipts**:

- Dues** paid by members for Mountaineers membership
- Initiation fees** paid by members upon joining
- Reinstatement fees** paid by members upon re-joining
- Course fees** and cancellation fees
- Fees paid for lodging, events, and food** at Mountaineers Recreational Properties
- Admissions fees to Mountaineers productions** including the Kitsap Forest Theatre productions and other events.
- Bookstore wholesale and retail sales**
- Books Division sales and other revenue**, including royalties on book sales
- Library overdue charges, research fees and book sales**
- Donations to the Mountaineers or The Mountaineers Foundation** made by members and non-members, or other outside entities, either by voluntary contribution or as the result of fundraising programs by either The Mountaineers or The Mountaineers Foundation.
- Proceeds from the Gear Grab events** and other Mountaineers-sponsored auctions
- Room rental revenue made without City of Seattle Department of Parks Recreation assistance
- Food and beverage sales
- Service charges for equipment
- Sales from Trail Passes, Sno Park Passes and other permits
- Accounting service revenue
- Mountaineer Magazine** advertising revenue
- Interest Income